

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: CIV- 04-21441

Moore

OMNIPOINT HOLDINGS, INC., d/b/a  
T-MOBILE USA, INC.,  
A Delaware Corporation

Plaintiffs,

vs.

MIAMI-DADE COUNTY, THE BOARD OF  
COUNTY COMMISSIONERS, MAYOR ALEX  
PENELAS, BETTY T. FERGUSON, DORRIN  
D. ROLLE, BARBARA CAREY-SHULER  
SALLY A. HEYMAN, BRUNO A. BARREIRO  
REBECCA SOSA, JIMMY MORALES, KATY  
SORENSEN, DENNIS C. MOSS, JAVIER D.  
SOUTO, JOA A. MARTINEZ, JOSE "PEPE"  
DIAZ, NATACHA SEIJAS, all in their official  
capacities and As the Mayor and Board Of County  
Commissioners, THE MIAMI-DADE COUNTY  
COMMUNITY ZONING APPEALS BOARD,  
DISTRICT 14, CHAIRPERSON WILBUR BELL,  
VICE-CHAIR, DON JONES, CURTIS  
LAWRENCE, PATRICIA WADE, CHARLIE  
McGAREY, MABEL G. DIJKSTRA, all in their  
official capacities as the Community Zoning  
Appeals Board, District 14, THE MIAMI-DADE  
COUNTY COMMUNITY ZONING APPEALS  
BOARD, DISTRICT 5, CHAIRPERSON JORGE  
I. BONSENOR, VICE-CHAIR, PAUL O'DELL,  
ARCHIE E. MCKAY, JR., ROBERTO P.  
SERRANO, LEONARDO A. PEREZ, SHARON  
FRANKLIN, JUAN A. GARCIA, all in their  
official capacities the Community Zoning Appeals  
Board, District 5

Defendants.

NIGHT BOX  
FILED

JUL 16 2004

CLARENCE MADDOX  
CLERK, USDC/SDFL/FTL

**PLAINTIFF'S REPLY TO DEFENDANTS' MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S EMERGENCY MOTION FOR PRELIMINARY INJUNCTION**

Plaintiff hereby files this Memorandum of Law in response to Defendants' Memorandum of Law in Opposition to Plaintiff's Emergency Motion for Preliminary Injunction and requests that this Court grant Plaintiff's Motion.

**I. REBUTTAL ARGUMENT**

**A. Applicable Standard for Granting Preliminary Injunctive Relief.**

The parties appear to agree as to the applicable standards for preliminary injunctive relief, but disagree as to whether such standards have been satisfied in the instant case.

**B. The CZAB's Decisions Constitute Final Action by the County Pursuant to Its Own Code and Form Adequate Basis for Injunctive Relief.**

Defendant argues the instant case is not ripe for judicial review because T-Mobile has failed to exhaust its administrative remedies. This argument is both misleading and disingenuous because, as Defendant well knows, the issue is not whether T-Mobile has exhausted its administrative remedies, but rather, whether the CZAB decisions constitute "final action" within the meaning of TCA and federal law. Although not relevant for discussions here, even Defendant cannot seriously dispute that an applicant need not exhaust its administrative remedies as a condition preceded to filing a claim under the TCA.

On the issue before this Court, 47 U.S.C. §332(c)(7)(B)(v) of the Telecommunications Act of 1996 ("TCA") provides a mandatory 30-day time period from the date of "any final action" by a local government within which to commence an action arising under the TCA in any court of competent jurisdiction. While TCA does not expressly define the term "final action" in §332(c)(7)(B)(v), a few courts have ruled on the issue within the context of the TCA. *See e.g. AT&T Wireless PCS, Inc. v. Town of Porter*, 203 F.Supp.2d 985, 989 (N.D. Ind. 2002) (holding the decision of its Board of Zoning Appeals constituted final action within the meaning of the TCA). *Omnipoint Communications, Inc. v. Zoning Hearing Bd.*, 4 F.Supp.2d 366, 369 (M.D. Pa. 1998) (holding that "final action" within the meaning of the TCA creates a cause of action in favor of any person adversely affected by any final action by a local government, including the Zoning Hearing Board ("ZHB") which is an "instrumentality" of local government; the fact that

the Township, as a governmental entity did not yet take final action, did not effect the “final action” taken by the ZHB which satisfied the TCA requirement.)

Specifically, the Defendants rely upon *Williamson County Regional Planning Comm’n v. Hamilton Bank*, 47 U.S. 172, 105 S.Ct. 3108, 87 L.Ed.2d 126 (1985) establishing the “Williamson Finality Rule” and *Sprint Spectrum v. City of Carmel, Indiana*, 361 F.3d 998, 1001-1005 (7<sup>th</sup> Cir. 2004) to argue that T-Mobile’s claims are not ripe for consideration by this Court. Both courts held that the Plaintiff’s claims were not ripe for judicial review because the local government had not yet taken “final action.” While the facts and procedural posture of each case are readily distinguishable, the “finality rule” established in both cases actually support Plaintiff’s position that the CZAB decisions *sub judice* constitute “final action” and thus, are properly before this Court for review pursuant to claims arising under the TCA.

In both *Williamson* and *Sprint v. Carmel*, the courts dealt squarely with the issue raised by the Defendants in the instant case. When does a local government decision constitute “final action”? *Williamson*, 47 U.S. at 173; *Sprint*, 361 F.3d at 999. The *Williamson* court succinctly stated that:

the question whether administrative remedies must be exhausted is conceptually distinct from whether an administrative action must be final before it is judicially reviewable.

*Id.* at 193.

The *Williamson* case is the seminal case establishing the “Williamson Finality Rule” evaluating ripeness claims. Although set forth in a takings claim context, the *Williamson* Finality Rule has been extended to ripeness reviews in all manners of claims arising from land use decisions. This Rule is designed to enforce the requirement that judicial interference should be delayed until an administrative decision has been formalized, and its effects felt in a “concrete way”. *Id.* at 193. The *Williamson* Finality Rule does not require the exhaustion of administrative remedies, rather, it permits the appeal of the final ruling of the initial decision-maker. *Id.*

In *Williamson*, the court found that the developer had failed to apply for and seek the necessary variances that would have allowed it to develop the property according to the proposed plat. *Id.* at 188. The court went on to find that the BZA had the power to grant variances that

could have resolved at least 5 of the 8 Commission objections to the developer's plat plan. *Id.* However, the developer filed suit against the Commission objecting to the application of the 1980 ordinance to its 1973 plat approval rather than availing itself first of the variance procedures provided for in the local code. *Id.* at 189. Hence, the *Williamson* court held, *inter alia*, that the developer could not maintain a position that "disapproval of the preliminary plat was equivalent to a final decision that no variances would be granted." *Id.*

Similarly, the facts of the *Sprint v. Carmel* case are readily distinguishable from the instant case and upon closer inspection of the case, the court's analysis and reasoning support T-Mobile's position that the CZABs' decisions below constitute final action and therefore, the instant case is ripe for judicial review.

Initially, Sprint sought and obtained a building permit to install its equipment on an existing ham radio tower. 361 F.3d at 1000. A neighbor objected based upon the ordinance that requires a special permit for such use in a residential district. *Id.* Shortly thereafter, the City of Carmel revoked Sprint's permit stating that Sprint also required a subdivision plat amendment. Sprint appealed the revocation of its permit to the BZA. *Id.* Eventually after some judicial wranglings, the BZA heard both Sprint's subdivision appeal and the neighbor's zoning appeal. Ultimately, the BZA held that Sprint was required to seek a special use permit and subdivision plat approval for installation of its equipment in a residential district. *Id.* Sprint responded to the BZA's decision by filing a complaint in federal court alleging violations of the TCA. *Id.*

Based upon a well-reasoned analysis of the TCA and federal ripeness doctrine, the court held that Sprint's claim was not ripe for judicial review explaining that the BZA's decision did not "completely foreclose Sprint from establishing wireless telecommunications facilities at the . . . site." Rather, the BZA decision mapped a "procedural route that Sprint must take in order to proceed with its project." *Id.* at 1004.

In the *Sprint* case, Sprint failed to apply for and seek approval of a special use permit. Therefore, the action taken by the City of Carmel in revoking a building permit was not "final action" since Sprint could still apply for a special use permit. Thus, the court correctly held Sprint's claim was not ripe for judicial review.

Contrast the facts of *Sprint* and *Williamson* to the facts of the instant case. The Defendants' Code clearly establishes an entry point to the zoning application process in §33-304

and an ending point in §33-312. The Martohue Affirmation and the Record below clearly establishes that both T-Mobile and the County followed and completed all the required procedural prerequisites, including a public hearing. In each instance, a public hearing took place, and a final Resolution was adopted and transmitted to the Clerk. MA ¶ 30,35, 43, 44, 84, 90, 93.

Specifically, the Defendants' assertion that the CZABs' decisions are not "final" within the meaning of the TCA, is belied by the Defendants' own Code. Section 33-302(q) defines "zoning action" to mean "any action pursuant to Chapter 33 of the Code of Miami-Dade County taken after public hearing" and §33-303 establishes the exclusive zoning procedure in unincorporated Miami-Dade County. Section 33-304 provides for, and requires the filing of, a zoning application for a special exception with the Director on application forms prescribed by Director. It is undisputed that T-Mobile made such applications in both of the cases *sub judice*. MA ¶¶25-27, 31-33.

Section 33-306 of the Code clearly provides for the establishment of, and CZAB jurisdiction over, zoning applications governed by Chapter 33. Therefore, the CZAB is an instrumentality of the local government. Sections 33-309 and 33-310 provide *inter alia*, various County procedures, notice and other hearing prerequisites prior to action taken by the CZAB at public hearing. In the instant case the County Staff confirmed, at each public hearing, that all such procedures, notices and hearing prerequisites were satisfied. (See Supplemental Appendix A attaching Site #1 Transcript p.5 and Site #2 Transcript p.3).

Additionally, §33-311(3) provides the general authority and duty to the CZAB to consider and act upon applications for special exceptions, and §33-311(18) establishes the express criteria and standards governing special exception requests to permit a wireless supported service facility. T-Mobile was not seeking any variance or alternative development options to locate the facility and therefore, such procedural mechanisms were not appropriate.

Most importantly, §33-312 provides that all CZAB decisions shall be by resolution and further, that such "[d]ecisions by the Community Zoning Appeals Boards are final and may be appealed pursuant to §33-316" 'unless such decision may be directly appealed within 14 days to the Board of County Commissioners ("BCC") pursuant to §33-314, Code. (emphasis supplied).

However, in this case, §33-314 does not provide for or permit a direct appeal by the applicant of either special exception request to the BCC. Similar to the action taken by the ZHB in *Omnipoint*, the final decision by the CZABs below, as instrumentalities of the County, constitutes final action sufficient to confer subject matter jurisdiction to this Court under the TCA. See *Omnipoint Communications*, 4 F.Supp.2d at 369. Like *Omnipoint*, the instant cause of action is predicted upon the “final action” of the CZAB. Any possibility of future action by the BCC does not affect the “final action” requirement of the TCA. See *Id.* Following the rationale of the *Omnipoint* Court, and in accordance with the plain language of the County’s Code, this Court should hold the CZAB decisions below evidenced by Resolution 5-6-04 and Resolution 14-18-04 fall within the TCA’s requirement of “any final action . . . by local government” to confer jurisdiction in the instant action.

The County’s assertion that §33-316 requires any person aggrieved by a CZAB zoning resolution order to first exhaust the remedies provided for in Article XXXVI before seeking judicial relief has no application in this case. The CZABs’ decisions to deny T-Mobile’s application for special exception may only be appealed to the BCC by the County and not an applicant. Even this §33-314 appeal mechanism to the BCC for denial of a special exception is only available to the County Manager in very limited circumstances<sup>2</sup>, and further, such appeal is wholly within the discretion of the County Manager, not the applicant<sup>3</sup>.

Unlike the facts in *Williamson* or *Sprint v. Carmel*, there are no other procedural routes for T-Mobile to take under the Code. Simply stated, the Defendant CZABs denied T-Mobile’s special exception Applications which constitutes “zoning action” as defined by §33-302(q) and a

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<sup>1</sup> Such an appeal would be petition for writ of certiorari in the state circuit Court or by an original action in federal court in accordance with federal law.

<sup>2</sup> The County Manager has limited appeal options and may only seek an appeal of a CZAB decision in the opinion of the County Manager that the a CZAB decision has either “(a) an overall impact to the County or (b) is inconsistent with the Miami-Dade County Comprehensive Development Master Plan, or (c) is incompatible with aviation activity or aviation safety.”

<sup>3</sup> The County Manager has 18 days within which to make this discretionary decision, if, in the sole opinion of the County Manager, certain criteria are satisfied. In both cases *sub judice*, the County Manager pleads that each of the individual zoning decisions at issue have County-wide impact in order to fit a square peg in a round hole of limited exceptions for an appeal to the BCC. Based on the record evidence below, the County Manager had only one questionable option, and that was to argue that somehow an individual zoning decision has “an overall impact to the County.” Of course, it appears that such decision is within the sole discretion of the County Manager, with no express criteria established to guide such decision-making. Basically, it is a political safety net that under the circumstances of the instant case, its being used to unfairly disadvantage the applicant and create a substantial risk of creating a new record that may be adverse to the applicant’s interests and further, may subject the applicant to defending a third-party appeal.

“final” decision pursuant to §33-312 which is appealable to any court of competent jurisdiction pursuant to §33-316. Thus, under local law, the CZABs do make “final” zoning decisions on special use permit applications such as those submitted by T-Mobile and in fact, did take “final action” within the meaning of the TCA and §33-302(q) and §33-312 of its own Code. Therefore, T-Mobile had no choice but to commence this action within the 30-day mandatory time period prescribed by the TCA. The Code further mandates such time period “shall commence to run from the date of the zoning resolution sought to be reviewed is transmitted to Clerk of the Commission.” 47 U.S.C. §332(c)(7)(B)(v); §33-316, Code.

Section 33-314 simply does not provide any further administrative remedies for an applicant to appeal the CZABs’ decisions. The County’s choice to take such further action that only it has the power and discretion to take in the instant two cases pursuant to §33-314 is not relevant to T-Mobile’s available remedies. To contend that the County’s exclusive administrative remedy could be imputed to T-Mobile from an exhaustion of administrative remedies standpoint, such that T-Mobile should be required to stand aside and wait while the County seeks redress, is unreasonable as it would have eventually precluded T-Mobile from seeking relief from the CZAB decisions altogether under the TCA which mandates commencement of a claim arising under the TCA within 30-days of “any final action” by the local government. The instant lawsuit is predicated on the final action taken by both CZABs below as evidenced by their respective Resolutions denying each Application. Thus, the July 15<sup>th</sup> BCC hearing, and any Resolutions adopted and transmitted to the Clerk therefrom, is clearly beyond the TCA’s 30-day mandated timeframe for commencing an action to review both CZAB decisions.

Defendants’ position would require that T-Mobile either waive or prejudicially constrict its rights to challenge the CZABs’ decisions under the TCA while the County sorted through its options. Implied in this waiting game is the premise that T-Mobile was supposed to wait 18 of its initial 30-days to see if the Defendants would exercise its extraordinary discretionary power to appeal<sup>4</sup>. Such position would have reduced T-Mobile’s ability to appeal the CZAB decisions from 30 days to 12 days in the event the County had decided, within its sole discretion, not to avail itself of its own exclusive administrative remedy.

Contrary to Defendants' assertion, regardless of the final outcome of the BCC hearing<sup>5</sup>, a case and controversy still exist that necessitates this Court's adjudication of Plaintiff's claims and damages, which began accruing immediately after both CZAB decisions.

**C. In Defending its Position, the County Fails to Address Plaintiff's Allegations that the CZAB Decisions Violated Several Provisions of the TCA.**

In an attempt to subvert what clearly is an indefensible position, the County deflects the entirety of Plaintiff's claims, asserting a myriad of violations of the TCA by creating hypothetical smoke screens based upon what might have happened before the BCC at the July 15, 2004 public hearing. Once again, the instant lawsuit is predicted upon the CZABs final actions, not the future actions of the BCC. Defendants' argument contained in subsection 2B of its Memorandum posing hypothetical in lieu of addressing the merits supporting T-Mobile's request for preliminary injunctive relief, is an avoidance tactic that should not be rewarded by this Court. Accordingly, Defendants response set forth at pages 6 – 7 of its Memorandum is non-responsive and should be stricken, or otherwise deemed without merit. Overall, Defendants' memorandum wholly fails to provide this Court with any legal analysis or basis to deny the injunctive relief requested by Plaintiff. Instead, Defendant relies upon an array of hypothetical assertions, all of which have been dismissed by the recent BCC's action on July 15, 2004. Defendant also relies upon bare conclusions that Plaintiff has not demonstrated fact sufficient to satisfy the required elements of its request for injunctive relief.

**The Defendant's Unreasonably Delayed the Plaintiff's Applications Under Both the TCA and State Law.**

The Defendants' desperate attempts to alter the filing date of the subject Applications to defend against T-Mobile's assertions of unreasonable delay in violation of state law and the TCA at pages 10 – 12 of its Memorandum simply do not comport with its own Code. The record below reflects that T-Mobile submitted its Applications on the applications forms prescribed by the Director in accordance with §33-304, Code. All forms required were properly completed and

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<sup>4</sup> Heretofore never before exercised relating to an appeal of individual zoning request for wireless supported service facility.

<sup>5</sup> At the July 14, 2004 public hearing, the BCC denied the County Manager's appeal and upheld the CZAB 14 May 11, 2004 decision denying Plaintiff's application for Site # 2. The BCC then deferred consideration of the County Manager's appeal of the CZAB 5 May 20, 2004 decision denying Plaintiff special exception application for Site #1 until July 29, 2004.

executed<sup>6</sup>, and all required fees were paid for both Applications on or before November 4, 2003 for Site #2 and on or before November 18, 2003 for Site #1<sup>7</sup>. The Code does not support Defendants' attempts to delay the calculation of the filing date by referring to letters and documents subsequently submitted by T-Mobile to supplement its Applications. The County at no time notified T-Mobile that either of its Applications was insufficient. Since these were the first two Applications considered by the County under its New Wireless Ordinance, T-Mobile in an abundance of caution, and upon its own initiative, submitted several letters and e-mails to County Staff as well as placed telephone calls reminding the Staff that their special exception requests were to be reviewed exclusively under the New Wireless Ordinance. Such communications, whether they be orally or in writing, do not alter the initial filing date of either Application by Code. Further, the New Wireless Code does not specify when or if any information must be furnished to the County Staff to address the criteria established in §33-311(A)(18) in addition to the information required on the prescribed application forms. Rather, presumably, the applicant could in fact submit this supplemental information at public hearing<sup>8</sup>.

Thus, assuming *arguendo* that the Site #1 Application was filed on November 18, 2003, the final public hearing still took place 132 business days after filing of the initial application. It is undisputed that the Application for Site #2 was submitted, received and paid for on November 4, 2003 and the public hearing which took place on May 11, 2004 occurred 135 business days after initial filing of the Application. Under §365.172(11)(c)2., absent a letter from the County noting any deficiencies in either Application, the statutory 90-business day timeframe required to process both Applications for public hearing long since expired prior to their respective public hearings.

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<sup>6</sup> It should be noted, that the County's application forms and application fees prescribed by the Director do not differentiate or in any way distinguish between a request for an unusual use or a special exception.


<sup>7</sup> There is an obvious dispute as to the actual filing date for Site #1, but regardless of whether it was October 18, 2003 or November 18, 2003, both dates exceed the 90-business day timeframe prescribed by §365.172(c)(11)2., *Florida Statutes* (2003).

<sup>8</sup> However, the wise applicant would submit such information to try to obtain a favorable Staff recommendation prior to public hearing.

*Respectfully submitted,*

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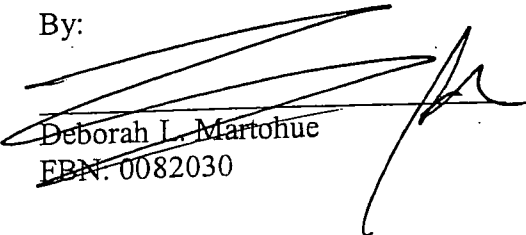
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1                   COMMUNITY ZONING APPEALS BOARD 5  
2                   AMERICAN HIGH SCHOOL - AUDITORIUM  
3                   18350 NW 67 Avenue, Hialeah  
4                   Thursday, May 20, 2004 at 7:00 p.m.

6                   ITEM

7                   COUNTRY CLUB SHOPPING CENTER, INC./T-MOBILE  
8                   (03-353)

9  
10                  Members of Council

11                  Present

12                  Jorge I. Bonsenor, Chairperson  
13                  Archie E. McKay, Jr., Vice-Chair  
14                  Roberto P. Serrano  
15                  Paul O'Dell  
16                  Leonardo A. Perez  
17                  Sharon Franklin  
18                  Juan A. Garcia

19                  COUNTY ATTORNEY'S OFFICE

20                  John McInnis, Assistant County Attorney

21                  STAFF

22                  Jorge Vital, Zoning Specialist  
23                  Jesus Davila, Evaluator  
24                  Earl Jones, Clerk  
25                  Public Works

On Behalf of the Applicant

                  Deborah Martohue, Esq.

**ORIGINAL**

                  METRO DADE COURT REPORTERS, INC.  
                  (305) 373-5600   FAX (305) 373-5008

1                   Staff, please, disclaimer.

2                   MR. VITAL: In accordance with the code of  
3                   Miami-Dade County, all items to be heard today have been  
4                   legally advertised in the newspaper, notices have been  
5                   mailed and the properties have been posted. Additional  
6                   copies of the agenda are available here at the meeting.  
7                   Items will be called up to be heard by agenda number and  
8                   name of applicant.

9                   "The record of the hearing on each application  
10                  will include the records of the Department of Planning  
11                  and Zoning. All these items are physically present  
12                  today, available to all interested parties and available  
13                  to the Members of the Board, who examine items from the  
14                  record during the hearing.

15                  "Parties have the right of cross-examination.

16                  "This statement, along with the fact that all  
17                  witnesses have been sworn, should be included in any  
18                  transcript of all or any part of these proceedings.

19                  "In addition, the following departments have  
20                  representatives present here at the meeting to address  
21                  any questions: The Department of Public Works, the  
22                  Department of Planning & Zoning, the County Attorney's  
23                  Office.

24                  "Any person making impertinent or slanderous  
25                  remarks or who becomes boisterous while addressing the

1                   COMMUNITY ZONING APPEALS BOARD - 14

2                   SOUTH DADE GOVERNMENT CENTER - ROOM 203 (OLD BUILDING)

3                   10710 S.W. 211 STREET, MIAMI

4                   Tuesday, May 11, 2004, AT 6:00 P.M.

5  
6                   ITEM

7                   T-MOBILE

8                   (03-327)

9  
10  
11                   Members of Council

12                   WILBUR BELL, Chairperson

13                   DON JONES, Vice-Chair

14                   CURTIS LAWRENCE

15                   PAT WADE

16                   DON JONES

17                   COUNTY ATTORNEY'S OFFICE

18                   Ron Bernstein, Assistant County Attorney

19  
20                   STAFF

21                   Judith Rawls, Zoning Evaluator

22                   Donna Jacobi, Zoning Specialist

23                   Leo Rodriguez, Public Works

\* \* \* \* \*

MS. JACOBI: "In accordance with the Code of Miami-Dade County, all items to be heard today have been legally advertised in the newspaper, notices have been mailed and properties have been posted. Additional copies of the agenda are available here at the meeting.

"Items will be called up to be heard by agenda number and name of the applicant. The records on each application will include the records of the Department of Planning & Zoning. All these items are physically present today and available to all interested parties and available to all Members of the Board, who examine items from the record during the hearing. Parties have the right of cross-examination.

"This statement, along with the fact that all witnesses have been sworn, should be included in any transcript of all or any part of these proceedings.

"In addition, the following departments have representatives present at the meeting to address any questions: The Department of Public Works, the Department of Planning & Zoning and the County Attorney's Office.

"All exhibits used in presentation before the Board become part of the public record and will not be returned unless an identical letter size copy is

IN THE CIRCUIT COURT OF  
THE ELEVENTH JUDICIAL  
CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY,  
FLORIDA.

APPELLATE DIVISION

CASE NO.

L.T. CASE NO. CZAB 5-6-04  
Hearing No.: 03-353

OMNIPOINT HOLDINGS, INC. d/b/a  
T-MOBILE USA, INC.

Petitioner,  
vs.

MIAMI-DADE COUNTY,  
A political subdivision of the  
State of Florida and Community  
Zoning Appeals Board 14,

Respondents.

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PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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Petitioner, Omnipoint Holdings, Inc., a/k/a T-Mobile USA, Inc. ("T-Mobile") hereby files its Petition for Writ of Certiorari<sup>1</sup>, for this Court to quash the Community Zoning Appeals Board 5 Resolution No.: 05-6-04 rendered on June 1, 2004. ("Resolution") (Ex. A). The Resolution denied T-Mobile's requests for site plan approval and a special exception to permit a stealth flagpole wireless supported service facility as defined by the Code ("flagpole WSSF"), 100 feet in height, including 4 internal wireless antennas (the "Application").

#### I. PRELIMINARY STATEMENT

Over the course of the past decade, wireless cellular technology has become an integral part of modern life. In order to meet the growing demand for personal wireless service, service providers have had to find new and innovative ways of increasing their network coverage while at the same time making their equipment compatible with the environments in which they are located. In addition, local governments, such as Miami-Dade

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<sup>1</sup> Citations will be abbreviated as follows: for the Appendix filed with this Petition, citation will be to the Appendix exhibit letter and exhibit page number, e.g., "Ex. A p.1; the Community Zoning Appeals Board 5 transcript of the May 20, 2004 public hearing will be referred to as "T." with the appropriate page(s) reference; the Code of Miami-Dade County will be referred to as "Code"; the Miami-Dade County Comprehensive Development Master Plan will be referred to as "CDMP"; and the Community Zoning Appeals Board 5 will be referred to as the "Board."

County ("County"), have begun to require that these concepts be incorporated into the design of wireless support facilities. See e.g. §33-311(A)(18)(a)5 setting forth mitigation standards and criteria.

To better grasp the impact of the Board's decision below, it is important to understand how the new special exception criteria governing wireless supported service facilities ("WSSF") in the County came to be adopted. On March 6, 2002, the Third District Court of Appeal held certain portions of the Miami-Dade County Zoning Code ("Code") including §33-311(A)(3), setting forth the standards governing unusual uses and special exceptions, facially unconstitutional. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 811 So.2d 767 (Fla. 3d DCA 2002) (hereinafter "*Omnipoint I*"). The County appealed the *Omnipoint I* decision to the Florida Supreme Court which ultimately reversed the decision on the constitutional issue in the Fall of 2003. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195 (Fla. 2003) (hereinafter "*Omnipoint II*"). During the interim period between the *Omnipoint I* decision and the *Omnipoint II* decision, the Code was completely devoid of any zoning procedure by which an applicant could apply for approval of an unusual use, including applications to place and/or construct wireless service facilities within the County.

Consequently, the *Omnipoint I* decision triggered a *de facto* moratorium on all development requiring public hearing approval of unusual uses and special exceptions, including a WSSF.

This *de facto* moratorium affected T-Mobile's ability to implement and install a substantial number of WSSF, which were and still are needed in order to deploy an adequate and reliable personal communications service ("PCS") network in the County, including those facilities required pursuant to Miami-Dade's Public Safety Answering Point ("PSAP") request to T-Mobile for enhanced 911 services. ("E911"). This PSAP request was made to T-Mobile March 8, 2002 and requires full compliance under T-Mobile's FCC Consent Decree and FCC License on or before May 17, 2005.

Consequently, the wireless industry, including T-Mobile, began a 17-month odyssey negotiating and collaborating with the County in a concerted effort to enact a zoning ordinance governing PCS facilities which contained objective standards and criteria that would pass constitutional muster. Ultimately, the wireless industry, including representatives from T-Mobile, were successful in working with the County to draft a revised ordinance that contained objective standards and criteria to evaluate applications for a WSSF as defined in the Code. The County adopted this ordinance by slim majority on July 8, 2003

and established a new §33-311(A)(18), which enumerated standards, and criteria governing a WSSF. ("New Wireless Ordinance").

After the Florida Supreme Court issued its Fall 2003 *Omnipoint II* decision which reversed *Omnipoint I* on the constitutional issue, the County decided to allow any applicant for a WSSF the option of electing which standards and criteria its application would be governed by when being reviewed by the County Staff and ultimately upon public hearing by the authorized Community Zoning Appeals Board. The applicant could make an election under §33-311(A)(3) (hereinafter the "Old Code") or the New Wireless Ordinance codified in §33-311(A)(18). (Ex. B p.1). The applicant was also given a third option of having the Board consider its application under both the Old Code and the New Wireless Ordinance. At all times material to the consideration of its Application by both County Staff and the Board, T-Mobile elected to be governed under the standards contained in §33-311(A)(18), Code. (T.pp.7, 11; Ex. B p.11).

Thus, taking into consideration the 17 month *de facto* moratorium plus the nearly 11 months from the adoption of the New Wireless Ordinance to the May 20, 2004 public hearing, T-Mobile experienced nearly 2½ years of delay and inability to place and construct its WSSFs in the County. Now, to add insult

to injury, as a result of the Board's unlawful decision, T-Mobile is compelled to file the instant Petition seeking relief from this Court causing it further unreasonable delay and expense.

## **II. STATEMENT OF THE CASE AND FACTS**

### **A. Introduction**

T-Mobile is a telecommunications provider licensed by the Federal Communications Commission ("FCC") to provide wireless telecommunications services to the public in Miami-Dade County and elsewhere. (T.p.7; Ex. C). In the instant case, the co-location capability of T-Mobile's flagpole would prevent the need for up to four additional towers in the immediate area surrounding the Application property. (T.p.10). Accordingly, T-Mobile sought to minimize the impact of the proliferation of towers by incorporating the concepts of stealth and co-location in its design for this Application. (Ex. D; T.pp.10, 23).

### **B. The Property and Site Plan.**

The property, which is the subject of the Application, consists of an 4.5 acre shopping center known as the Country Club Shopping Center located at 7660 N.W. 186<sup>th</sup> Street (Miami Gardens Drive), a heavily traveled major east-west thoroughfare in Miami-Dade County, immediately east of 77<sup>th</sup> Avenue (the "Property"). (Ex. B p.2). The actual lease parcel is

approximately 850 square feet<sup>2</sup> (25' x 34') containing a 3' x 15'<sup>3</sup> equipment pad. (Ex. E pp.C-1, C-2; Ex. B p.11; T.pp.9-10). The flagpole WSSF, including its related equipment cabinets, is proposed to be located internal to the existing parking lot, central to the Shopping Center itself, and adjacent to an existing parking lot island. (Ex. E p.C-1; T.p.10). The site plan calls for the equipment cabinets to be located at the base of the flagpole WSSF wholly enclosed, screened and secured by a wood fence six (6) feet in height. (Ex. E pp.C-1, C-2; Ex. B p.11; T.p.10).

The CDMP designates the Property as Business and Office (T. p.8; Ex. B p.2). The CDMP designation permits utility facilities, such as telecommunications facilities in all urban land use categories. *Id.* The staff expressly found that the proposed flagpole WSSF is consistent with the CDMP. (Ex. B p. 11; T.p.11). The Property is zoned BU-1A which is a neighborhood commercial zoning district that permits commercial uses and is presently developed as an existing shopping center with fully developed outparcels. (Ex. B p.2; Ex. F; T.p.8). A

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<sup>2</sup>An infinitesimal portion of the entire site representing only .0043 percent of the 4.5 acre parcel.

<sup>3</sup>There is an error in the transcript describing the equipment pad as 10' x 15' (T. p.10, line 7); the plans show a 3' x 15' equipment pad. (See Ex. E).

stealth flagpole WSSF is a permitted use by special exception pursuant to §33-63.2(c)(1), Code.

### C. The Zoning Requests

The Application involved two zoning requests: (1) a special exception to permit a WSSF in a BU-1A zoning district; and (2) modification of a previously approved site plan to permit construction of a WSSF. (Ex. B pp. 1, 11; T.p.10).

The flagpole WSSF is setback  $\pm$  275 feet from the north property line,  $\pm$ 252 feet from the east property line,  $\pm$ 124 feet from the west property line, and  $\pm$ 237 feet from the south property line (Ex. E p.C-1; T.pp.8-9). The closest residential use is more than 300 feet from the flagpole to the south and the farthest is more than 1800 feet to the west. (T.pp.8-9; Ex. G). The Code requires a camouflaged WSSF such as the flagpole WSSF proposed in the instant Application to comply with the underlying zoning district setbacks. See §33-311(A)(18)(a). T-Mobile did not request any deviations from the setback requirements, in fact the Application meets and exceeds all Code setback requirements. (T.pp.8-9, 24; See generally Ex. B).

### D. §33-311(A)(18) Code Standards & Criteria

The Staff Recommendation sets forth the extensive criteria and standards applicable to an application seeking special exception approval to permit a WSSF. (Ex. B pp.3-10). Many of

the criteria apply solely to non-camouflaged WSSF. *Id.* In the instant case, T-Mobile proposed a camouflaged WSSF designed as a flagpole and therefore, only those standards and criteria for camouflaged WSSF apply. *Id.* Of critical importance is the "Purpose" section introducing §33-311(A)(18). This "Purpose" section is so pivotal to the understanding of this case, it is quoted in its entirety below:

(a) Purpose. The purpose of this subsection is to create objective standards to regulate Wireless Supported Service Facilities, including Antenna Support Structures. Upon demonstration at public hearing that a zoning application for a Wireless Supported Service Facility, including Antenna Support Structures is in compliance with the standards herein and the underlying district regulations in section 33-36.2 and does not contravene the enumerated public interest standards established herein, the Wireless Supported Service Facility, including the Antenna Support Structure, shall be approved. (emphasis supplied).

Accordingly, if an application complies with the applicable objective standards contained in §33-311(A)(18) et. seq., the Board is mandated to approve the zoning request. See §33-311(A)(18)(a), Code. Such requirement is consistent with Florida law. See e.g. *Metropolitan Dade v. Fuller*, 515 So.2d 1312, 1313 (Fla. 3d DCA 1987) (holding that when a use is permitted in a particular district subject to the grant of a

special exception, this requirement is tantamount to a legislative finding that the prescribed use is in harmony with the other uses in the district and must be granted if the conditions of the zoning ordinance are met).

### 1. General Standards

The following are the relevant excerpts from the general standards applicable to T-Mobile's zoning request including reference to the evidence and/or testimony provided to demonstrate compliance therewith.

- The approval of the Wireless Support Facility shall not cause the subject property to fail to comply with any portion of this code or the Comprehensive Development Master Plan. §33-311(A)(18)(a)1.a.

County Staff expressly found that the Application "is consistent with the Comprehensive Development Master Plan and "[w]hen analyzed under §33-311(A)(18), ... this application complies with the same." (Ex. B p.11).

- The proposed Antenna Support Structure and related equipment shall comply with the underlying zoning district standard lot coverage regulations. §33-311(A)(18)(a)1.b.

The Site Plan submitted as evidence and reviewed by County Staff, did not increase or in any way alter the lot coverage of the existing shopping center. (Ex. E; T.p.11). Rather, the flagpole WSSF is proposed to be located within the existing parking lot. (Id.; T.p.10).

- The propose Antenna Support Structure shall not involve any outdoor lighting fixture that casts light on the adjoining parcel of land at an intensity greater than that permitted by Section 33-4.1 of this code, unless providing safety lighting as required by FCC or FAA regulations. §33-311(A) (18) (a)1.c.

T-Mobile proposed a stealth flagpole WSSF which would require uplighting of the flag by federal law, however, all such lighting would be in compliance with §33-4.1, Code. (T.p.11). Further, T-Mobile gave the Board the option to not include the flag if it was their desire to avoid any lighting. (T.p.11). Further, the FAA determined that marking and lighting for safety purposes is not required for the instant flagpole WSSF. (Ex. I p.1).

- The proposed Wireless Supported Service Facility shall provide adequate parking and loading and provide ingress and egress so that vehicles servicing the facility will not block vehicular and pedestrian traffic on abutting streets. §33-311(A) (18) (a)1.c.

As shown on the site plan submitted by T-Mobile, the flagpole WSSF is centrally located within the shopping center between two drive aisles with parking spaces located immediately to the east and the west. (Ex. E p.C-1). Therefore, adequate parking, loading, ingress and egress is provided and designed such that no pedestrian or vehicular traffic on abutting streets is blocked while the facility is serviced. (T.p.12). The facility is unmanned and serviced approximately once every two

weeks. (T.p.12). Moreover, County Staff made an express finding of compliance with this subsection. (Ex. B p.11).

- The applicant's proposed Antenna Support Structure associated with the proposed Wireless Supported Service Facility shall be designed in such a manner that in the event of a structural failure, the failed portion of the Antenna Support Structure shall be totally contained within the parent tract. §33-311(A)(18)(a)1.f.

The subject WSSF is a camouflaged WSSF and thus, the "fall zone" factor defined by Code does not apply. (See §33-311(A)(18)(a)1.d. applies only to non-camouflaged WSSF structures.) Nevertheless, T-Mobile presented evidence and testimony that the 100-foot height flagpole WSSF meets and exceeds not only the underlying district setbacks but also the setbacks that would otherwise be required for a non-camouflaged WSSF which would equal 110 feet in this case<sup>4</sup>. Such "fall zone" setbacks are intended to ensure that in the event of a structural failure, the entire WSSF would be contained within the parent parcel. (Ex. E p.C-1; T.p.12). The site plan shows that the minimum set back provided is 124 feet from the west property line and the next shortest setback distance being 235 feet from the south property line. (Ex. E p.C-1; T.pp.8-9, 12). Moreover, upon application and issuance of a building permit, T-

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<sup>4</sup>The "fall zone" factor equals 110% of the WSSF height. Accordingly, 110% of a 100-foot height WSSF equals 110 feet.

Mobile would be required to comply with the South Florida Building Code structural requirements.

- Proposed fences have the "unfinished" side, if any, directed inward toward the center of the leased parcel proposed for installation of the Antenna Support Structure and related equipment. §33-311(A)(18)(a)1.g.

The Site Plan shows that the "unfinished" side of the required wood fence be directed toward the interior of the lease parcel. (Ex. E p.C-6).

- Proposed fences will be constructed of durable materials and will not be comprised of chain link or other wire mesh, unless located in an AU or GU zoning districts. §33-311(A)(18)(a)1.g.

The proposed fence detail shows a 6 foot height wooden slat fence as required. (Ex. E p.C-6)<sup>5</sup>.

- Hedges. Hedges shall be a minimum of three (3) feet in height when measured immediately after planting and shall be planted and maintained to form a continuous, unbroken, solid, visual screen within one (1) year after time of planting. §33-311(A)(18)(a)1.i.1.b.

The enlarged site plan and landscape plan depict a continuous hedge of silver buttonwood specifying overall 3-foot height. (Ex. E pp.C-2, L-1). In addition, Condition No. 4 of the County's Staff Recommendation requires landscape plan

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<sup>5</sup> Sheet C-1 incorrectly notes a 7-foot height fence, however, Staff Recommendation contains reference to the Application's compliance with the required 6-foot height fence and this 6-foot height was verified and agreed to by T-Mobile's zoning counsel at the public hearing. (Ex. E p.C-1; T.pp.38-39).

approval prior to issuance of a building permit to ensure compliance with the Code. (Ex. B p.12).

## 2. Health & Safety Standards

- The proposed Wireless Support Service Facility shall not block vehicular or pedestrian traffic on adjacent uses or properties. §33-311(A)(18)(a)2.a.

As stated previously, in demonstrating compliance with the applicable general standards, the location of the flagpole WSSF does not block vehicular or pedestrian traffic. (Ex. B p.11; Ex. E pp.C-1, C-2; T.p.12).

- The proposed Wireless Supported Service Facility shall be accessible to permit entry onto the property by fire, police and emergency services. §33-311(A)(18)(a)2.b.

Identical to the response above, the site plan reflects and the Staff Recommendation finds that the flagpole WSSF is accessible to emergency response personnel. (Ex. B p.11; T.p.12). Moreover, Public Works had no objections to the Application. (Ex. B p.11).

- The proposed Wireless Supported Service Facility shall comply with any applicable Miami-Dade County aviation requirements. §33-311(A)(18)(a)2.c.

T-Mobile submitted a Federal Aviation Determination prepared by Aviation Management Associates, Inc. dated January 19, 2004 regarding the subject Application which concluded that the proposed flagpole WSSF does not require additional review by the FAA. (Ex. H). In addition, T-Mobile submitted a

"Determination of No Hazard to Air Navigation" prepared by the FAA and dated April 20, 2004 concluding that the proposed flagpole WSSF "does not exceed obstruction standards and would not be a hazard to air navigation." (Ex. I; T.p.13).

- Safe sight distance triangles are maintained pursuant to Section 33-11 of this code. §33-311(A)(18)(a)2.d.

Public Works expressed concerns regarding visibility when cars are backing out of the spaces adjacent to the proposed fence. Based upon these comments from the Public Works Department, T-Mobile increased its lease area to include four (4) additional parking spaces, two located to the east and two located to the west, of the fenced equipment compound. (Ex. E p.C-1). As a result, T-Mobile modified its site plan to include striping and bumper posts to prevent parking in the adjacent 4 parking spaces to maintain adequate safe site distance triangles. (Ex. E p.C-1; T.pp.13, 39).

### 3. Environmental Standards

- The proposed Antenna Support Structure and related equipment shall not result in the destruction of trees that have a diameter at breast height (as defined in Section 18A-3.(J) of this code) of greater than 10 inches, unless the trees are among those listed in Section 24-60(4)(f) of this code. §33-311(A)(18)(a)3.a.

The Application does not propose to remove any trees from the site. (Ex. J).

- The proposed Wireless Supported Service Facility shall not be located in an officially designated natural forest community. §33-311(A)(18)(a)3.b.

The Property is not located in an officially designated natural forest community as evidenced by the record including the Report prepared by ATC dated August 11, 2003 and confirmed by Staff in its recommendation. (Ex. K p.1; Ex. B p.11).

- The proposed Wireless Supported Service Facility shall not be located in an officially designated wildlife preserve. §33-311(A)(18)(a)3.c.

The Property is not located in an officially designated wildlife preserve as evidenced by the Record including the Report prepared by ATC dated August 11, 2003 and confirmed by Staff in its Recommendation. *Id.*

- The applicant shall submit an environmental impact study prepared by a licensed environmental firm that the proposed Wireless Supported Service Facility will not affect endangered or threatened species or designated critical habitats as determined by the Endangered Species Act of 1974; and that the facility will not have a substantial deleterious impact on wildlife or protected plant species. §33-311(A)(18)(a)3.d.

T-Mobile commissioned an environmental impact study by ATC which obtained confirmation from the Florida Fish and Wildlife Conservation Commission based upon ATC's study that the flagpole WSSF will not affect endangered or threatened species or designated critical habitats or have a deleterious impact on wildlife or protected place species. (See Ex. K; T.pp.13-14; Ex. B p.11).

- The applicant shall submit a historical analysis prepared by a professional cultural specialist that the proposed Wireless Supported Service Facility shall not affect districts, sites, buildings, structures or objects of American history, architecture, archeology, engineering or culture, that are listed in the National Register of Historic Place or applicable Miami-Dade County or State of Florida historic preservation regulations. §33-311(A)(18)(a)3.e.

T-Mobile also submitted the required historical analysis report prepared by Panamerican Consultants, Inc. dated May 2003 which findings were subsequently confirmed by the Florida Department of State, Division of Historical Resources on June 17, 2003, that the subject Application will have no adverse effects on historic or archeological resources. (Ex. L; Ex. M; T.p.14; Ex. B p.11).

- The proposed Wireless Supported Service Facility shall not be located on an Indian Religious site. §33-311(A)(18)(a)3.f.

In addition, T-Mobile submitted a letter dated July 2, 2003 from the Miccosukee Tribe of Indians that the proposed Application will not be located on an Indian cultural, historical or religious site. (Ex. N; T.p.14; Ex. B p.11).

#### 4. Necessity Standards

The Code standards that require the Applicant to demonstrate "necessity" for the WSSF is an essential linchpin in the review of this case both by the Board and this Honorable Court such that quotation of the entire text will serve to enhance this

Court's understanding of the issue. Thus, §33-311(A)(18)(a)4 provides as follows:

- a. The applicant shall establish that there are no available existing Wireless Supported Service Facilities or buildings within the prospective provider's search area suitable for the installation of the provider's Antennas due to one or more of the following circumstances:
- (i) existing Wireless Supporting Service Facilities or buildings within the search area have insufficient structural capacity to support the proposed antennas and related equipment; or
  - (ii) existing Wireless Supported Service Facilities or buildings within the search area are not of sufficient height to resolve the lack of wireless service coverage or capacity in the area intended to be served by the proposed Wireless Supported Service Facility or to cure the signal interference problem in that area; or
  - (iii) the proposed Antenna would cause radio frequency interference or other signal interference problems with existing Wireless Supported Service Facilities or buildings, or the Antenna on the existing Wireless Supported Service Facilities or buildings may cause signal interference with the provider's proposed Wireless Supported Service Facility; or
  - (iv) the owner of an existing building or Wireless Supported Service Facility located within the provider's search area that has existing height and structural capacity and would otherwise resolve the lack of wireless service coverage, a deficiency in capacity or signal interference problems, has rejected the provider's reasonable attempts to locate its Wireless Supported Service Facility on its building or facility.

The applicant shall provide evidence of one or more criteria listed in 12(a-d) [sic] above with an affidavit from a radio frequency engineer, structural engineer, owner or authorized provider's representative acceptable to the

Department, as applicable. For purposes of this section, search area shall mean the geographic area within which the provider can demonstrate that the Wireless Supported Service Facility must be located in order to resolve the lack of wireless service coverage, a deficiency in capacity or signal interference problems.

- b. The applicant shall demonstrate that the proposed Wireless Supported Service Facility will cure:
- i. signal interference problems; or
  - ii. the lack of wireless service coverage or capacity in the area intended to be served by the proposed Wireless Supported Service Facility; and
  - iii. will allow its customers to make and maintain wireless calls on a reliable basis as defined by the provider's quality criteria.

T-Mobile began its discussion of this issue during public hearing with a PowerPoint presentation describing in general terms the process of site selection as well as general radio frequency engineering principles. (Ex. O; T.pp.14-19). Thereafter, T-Mobile presented the Board with expert evidence prepared by a licensed radio frequency ("RF") engineer concerning the necessity of this proposed site as an integral part of T-Mobile's PCS network in the County to provide in-building and in-car coverage and resolve a lack of coverage and capacity on Miami Gardens Drive and the surrounding residential communities. (Composite Ex. P; T.pp.19-22). T-Mobile also submitted an affidavit prepared by an RF engineer, RF

propagation maps, and drive test data<sup>6</sup> that demonstrated a significant coverage gap of approximately 3 square miles in T-Mobile's PCS service in the area immediately surrounding and including the Property. (Composite Ex. P).

T-Mobile presented undisputed evidence and testimony that demonstrated a lack of other suitable sites for the proposed WSSF. (Ex. Q; T.pp.22-23). T-Mobile also submitted a street map into the Record showing all of the surrounding existing towers in the area, including those towers where T-Mobile currently is operating its facilities. (Ex. R). The evidence of necessity presented also included a letter dated November 11, 2004 to Miami-Dade County requesting to collocate on the County-owned lattice tower located at 7750 NW 186<sup>th</sup> Street, Miami, Florida 33015, across the street from the Property. (Ex. S; T.p.22). T-Mobile also submitted evidence in the form of a letter from the County dated February 27, 2004, declining T-Mobile's request to collocate based on an alleged potential for interference with the County's transmission of emergency communications. (Ex. T; T.p.22).

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<sup>6</sup>The propagation maps show coverage without and with the proposed WSSF and includes the drive test data overlay on both maps. The test drive data shows existing "gap" conditions, even on the map showing the expected coverage utilizing RF predictive tools with the facility. Actual drive test data with the new WSSF cannot

## 5. Mitigation Standards

The following are the relevant mitigation standards applicable to a camouflaged WSSF. Since the WSSF is camouflaged, in other words, designed to resemble a natural or man-made object other than a WSSF, it is presumed to minimize visual impact and thus, the criteria relating to the minimization of visual impact for non-camouflaged WSSF structures do not apply to this Application.

- Any proposed Antenna Support Structures shall be designed to accommodate the collocation of at least two (2) Providers. §33-311(A) (18) (a) 5.c.

T-Mobile provided evidence and testimony that the proposed flagpole WSSF is designed to accommodate not two, but rather three additional wireless providers for total of four Providers, including T-Mobile at this location. (Ex. E p.C-3; T.p.10). Such evidence met and exceeded the County's requirement to provide two (2) additional collocation opportunities on a WSSF 100 feet in height or less. §33-311 (18) 5.c. Code. (Ex. E p.C-3; T.p.10). T-Mobile presented a letter into the record that it had already solicited letters of interest from other providers to collocate their facilities on the proposed flagpole WSSF. (Ex. U).

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be conducted until such time as the new WSSF is installed and operating. (See Ex. P; T.pp.19-23).

- be designed to preserve all vegetation to the maximum extent feasible to mitigate visual impact and create a buffer that harmonizes with the elements and characteristics of the existing parcel on which the Wireless support Service Facility is located and adjacent properties; and shall be designed to be harmonious with the architectural elements of the surrounding structures, such as bulk, massing and scale of surrounding properties; or be designed to blend and be harmonious with the principal structure on the property on which the Antenna Support Structure is proposed to be constructed and installed. §33-311(A)(18)(a)5.e.

T-Mobile submitted a survey, site plans, a landscape plan, and photo simulations as evidence into the Record below demonstrating that not only was all vegetation being preserved on-site, T-Mobile was adding landscaping along with fencing to minimize the visual impact of its equipment cabinets at the base of the flagpole. (Ex. J; Ex. E; Ex. D). In addition, T-Mobile proposed a stealth WSSF design at the minimum height necessary to meet its radio frequency engineering objectives to further minimize visual impact and blend in with the surrounding shopping center and fire station. (Ex. E; Ex. D; Ex. Q; T.p.23).

- A camouflaged Antenna Support Structure shall be designed as an artificial tree or to serve a purpose other than supporting antennas (i.e., lighting of sports facilities, transmission of electrical and/or telephone lines, flag poles). §33-311(A)(18)(a)5.f.

In the instant case, T-Mobile designed its WSSF to resemble a flagpole and thus, complied with the Code requirement. (Ex. E p.C-3; Ex. D; T.p.23).

- To reduce the visual impact, an Antenna Support Structure readily observable from residentially zoned districts located within the immediate vicinity of the leased parcel shall be a camouflaged Antenna Support Structure. . . . §33-311(A)(18)(a)5.g.

The Code defines "immediate vicinity" to be within 500 feet of residentially zoned districts, therefore the proposed flagpole WSSF is located within the immediate vicinity of residentially zoned districts. (Ex. G; T.pp.8-9). T-Mobile complied with the camouflaging requirement by designing its WSSF as a flagpole. (Ex. E p.C-3; Ex. D; T.p.7).

- The architectural design, scale, mass, color, texture and building materials of any proposed equipment building structure shall be aesthetically harmonious with that of other existing or proposed structures or building on the parent and leased tracts and in the immediate vicinity. §33-311(A)(18)(a)5.i.

The equipment cabinets proposed are 2.6'W x 4.3'L x 5.4'H in dimension and are wholly enclosed within the required wood fence. (Ex. E; T.p.23). Thus, the equipment cabinets are not visible to adjacent uses or properties. (Ex. D).

- The accessory wireless equipment building used in conjunction with the proposed Wireless Supported Service Facility shall be designed to mitigate visual impact and be comparable with the scale and character of the existing structures on the subject property and in the immediate vicinity, or blend into natural surroundings vegetation or buildings through the use of color, building materials, textures, fencing or landscaping to minimize visibility from or otherwise make the appearance of the accessory wireless equipment building the least visually obtrusive to adjacent uses and properties, as well as pedestrian and vehicular traffic. §33-311(A)(18)(a)5.j.

In the instant Application, T-Mobile utilizes equipment cabinets approximately the same size as commercial air-conditioning units or small refrigerators rather than larger buildings. (Ex. E). Moreover, through the use of wood fencing and landscaping, T-Mobile achieves compliance with §33-311(A)(18) goals of minimizing visibility and visual obtrusiveness of its equipment to adjacent uses and properties as well as pedestrian and vehicular traffic. *Id.* As a practical matter, the fencing and landscaping render the equipment cabinets "invisible" to surrounding persons and properties. (Ex. D; T.pp.13, 23).

**E. Favorable Staff Recommendation**

Staff recommended approval of the Application to permit the location of the flagpole WSSF. (Ex. B p.12). Staff made an express finding that the Application is consistent with the CDMP (Ex. B p.11). In addition, Staff found that the proposed facility will provide a service to the community, and satisfied each of the applicable objective standards and criteria contained in §33-311(A)(18). (Ex. B pp.11-12). Further, the Department of Environmental Resources Management, Public Works, Parks, Miami-Dade Transit Agency, Fire Rescue, Police, Schools and Aviation also had no objections to the Application (Ex. B pp.10-11).

#### F. Objectors Testimony

Several objectors to the Application appeared before the Board to voice their concerns. (T.pp.25-36). Ms. Martinez's "main issue with the antenna is radiation." (T.pp.25-27). Mr. Leon questioned the height of the fence and safe site distance triangles. (T.pp.27-30). He was concerned that parking adjacent to the seven foot height fence would impair visibility and be unsafe. (T.p.29). Subsequently, Ms. Almanza seconded his concern regarding visibility issues. (T.p.32). On rebuttal, zoning counsel for T-Mobile stated the height of the fence was six feet, not seven, there was an error on the plans and this was confirmed by the Staff Recommendation. (T.pp.38-39; Ex. B p.11). In addition, zoning counsel explained that Public Works had raised the same issues as Mr. Leon in its original comments and in response, T-Mobile acquired four more parking spaces, two on each side of the fenced compound, that would be striped and have parking bumpers to prevent parking adjacent to the fence. (T.pp.38-39; Ex. E p.C-1). She testified that this site plan revision addressed the safe site triangle issue raised by Public Works and Mr. Leon and thus complied with the Code. (T.p.39; Ex. E p.C-1). Her testimony was not contradicted by Staff. (See T.p.39).

Next, Ms. Hagan offered speculative non-expert testimony concerning the availability of alternative sites for T-Mobile's facility. (T.p.30). She went on further to complain that T-Mobile's facilities would interfere with the County's emergency communication system. (T.p.31). Ms. Almanza seconded this concern. (T.p.31). During rebuttal, zoning counsel reminded the Board of the uncontroverted expert testimony supporting the need for this site and that the prior approval for a facility at the church located off NW 186<sup>th</sup> Street near NW 67<sup>th</sup> Avenue was never built and further, is outside of T-Mobile's search area. (T.pp.39-41). Further, she explained that the County's emergency communications system operates on an 800-850 MHz spectrum, in contrast to T-Mobile's system which operates on the 1900 MHz spectrum, and thus, any concern about potential interference is not based in fact. (T.pp.37-38; See Ex. I p.4; Ex. P, Affidavit ¶8).

Ms. Almanza inquired as to the viability of placing T-Mobile's facilities on existing light poles. (T.pp.32-33). She admitted that she does not "know anything about those two technologies and how the two might conflict with each other." (T.p.33). She also complained generally that towers are "unsightly" and then questioned the need for the WSSF. (T.p.33). On rebuttal, zoning counsel for T-Mobile reminded the

Board of the expert testimony presented demonstrating need for the site and explained that the light poles were not a viable alternative for three reasons: 1) insufficient height to provide adequate coverage; 2) insufficient structural capabilities; and 3) currently, FP&L has a policy not to allow wireless providers to place their antennas and equipment on their facilities. (T.pp.41-42, 54-55). Finally, Ms. Almanza concluded her testimony questioning why she could not object on the basis of health concerns. (T.p.34). Both the Assistant County Attorney and T-Mobile's legal counsel advised the Board and the objectors that testimony regarding alleged adverse health concerns is not permitted to be considered by local zoning authorities pursuant to the Telecommunications Act of 1996. (T.pp.26, 42).

Ms. Jo Pettis testified next reiterating previous objectors concerns about the potential for interference with the County's emergency communication system. (T.pp.35-36). T-Mobile's zoning counsel explained on rebuttal how emergency calls are prioritized and routed accordingly and confirmed the impossibility of interference between T-Mobile's system which operates on a 1900 MHz spectrum and the County's system which operates on the 800-850 MHz spectrum. (T.pp.37-38; Ex. I p.4).

### G. The Board's Questions and Opinions

After public comment and T-Mobile's rebuttal, the Board closed the public hearing and asked the Applicant several questions. (T.pp.43-61). Board members asked questions about: 1) flag lighting (T.pp.43, 57-58); 2) flag maintenance (T.p.44); 3) whether future providers will be required to install their antennas inside the flagpole (T.pp.44-45); 4) maintenance of the proposed fence and landscaping (T.pp.45-47); 5) adequacy of parking spaces in the shopping center (T.pp.48, 55-57); 6) the size and color of the flagpole itself (T.pp.49-50, 60-61); 7) fencing material (T.pp.50, 57); 8) prior zoning history and prior potential deviations from required parking (T.pp.50-53); 9) potential for placing T-Mobile's facilities on FP&L poles (T.pp.54-55); 10) compound security and maintenance (T.pp.58-60) and 11) necessity for a 100 foot height flagpole (T.p.61).

In response to the Board's questions, zoning counsel for T-Mobile answered each question with reference to evidence or testimony previously provided or unrebutted fact-based testimony. (T.pp.44-61). Ms. Martohue explained that: 1) the flagpole would comply with Federal lighting requirements in addition to the local Code and further offered the Board the option to install the flagpole without a flag to avoid the lighting issue (T.p.44); 2) T-Mobile owns the facility and would

be responsible for maintaining the flag in compliance with Federal law (T.p.44); 3) future wireless providers would be required to install their antennas and equipment in accordance with the approved plans (T.p.45); 4) T-Mobile is responsible for and would have maintenance contracts to maintain the fence and landscaping (T.pp.46-47); 5) while a total of eight parking spaces were being removed to allow for installation of the WSSF, there currently exists nearly 100 parking spaces over and above the number of parking spaces required by the Code for the entire shopping center and no variance from parking requirements was being requested (T.pp.48, 55-57); 6) the pole would be approximately 5.5 feet in diameter at the base tapering to approximately 18 inches at the top for structural reasons (Ex. E p.C-3; T.pp.48-49). She stated the flagpole is proposed to be white in color but offered the Board any color option it desired (T.pp.49, 61); 7) the fence is proposed to be wood as required by Code, however, she offered the Board the option to condition the approval to install a fence of a different material if it so desired (T.p.50); 8) the prior zoning history did not grant any parking variances and this statement was confirmed by County Staff (T.pp.50-53); 9) FP&L currently has a state-wide policy not to allow wireless providers to place their equipment on FP&L poles and therefore it is not a viable option (T.p.54); 10) the

compound is secure and that T-Mobile has a vested interest in securing and maintaining its equipment which is very expensive (T.pp.58-60); and 11) the proposed 100 foot flagpole height was the minimum necessary referring to the prior expert testimony and evidence provided to the Board addressing this issue. (Ex. P; T.p.60 referring to testimony at T.pp.19-23).

#### H. The Board's Decision

Following the public hearing, Board Member Serrano motioned for denial of the Application setting forth no basis whatsoever for his motion. (T.p.62). Thereafter, without any further discussion or deliberation, the chairman called for a vote. (T.p.62). The Board voted 4-3 to deny the Application with no reasons or rationale stated on the Record for its decision. (T.pp.62-63).

### III. SUMMARY OF ARGUMENT

The Board failed to support its decision with competent substantial evidence as mandated by Florida law and the TCA. The Application for a special exception to permit a stealth flagpole WSSF is governed by the standards and criteria established in §33-311(A)(18), Code. The Record below does not contain any evidence, not even a scintilla of evidence, relevant to the governing Code criteria, to support the Board's denial of the subject Application. T-Mobile presented evidence and testimony into the record during public hearing that was uncontroverted, unchallenged and undisputed with factually accurate information or expert testimony by either the objectors or the Board. Consequently, any zoning decision that is not supported by competent substantial evidence is unlawful and must be quashed. See *Haines City Community Dev. v. Heggs*, 658 So.2d 523, 530 (Fla. 1995).

### IV. JURISDICTION

Decisions of local governments on zoning matters, including special exceptions, are quasi-judicial in nature and therefore, are subject to certiorari review by the circuit court. Rule 9.030(c)(3) and 9.100(c), *Florida Rules of Appellate Procedure*; *Park Commerce Assoc., Inc. v. City of Delray Beach*, 636 So.2d

12, 15 (Fla. 1994); accord, *Board of County Comm'rs of Brevard County v. Snyder*, 627 So. 2d 469, 474 (Fla. 1993). Certiorari review in Circuit Court to review local administrative action under Rule 9.030(c)(3), *Fla.R.App.P.*, is not truly discretionary common-law certiorari because the review is a matter of right. *Miami-Dade County v. Omnipoint Holdings, Inc.*, 863 So.2d 195, 198 (Fla. 2003) citing *Florida Power & Light v. City of Dania*, 761 So.2d 1089, 1092 (Fla. 2000).

#### V. STANDARD OF REVIEW

Certiorari review of the Petition requires that this Court determine whether the Board: (1) accorded petitioners due process of law; (2) observed the essential requirements of law; and (3) supported its decision with competent substantial evidence. *Haines City Community Dev. v. Heggs*, 658 So. 2d 523, 530 (Fla. 1995); accord *City of Deerfield Beach v. Vaillant*, 419 So.2d 624, 625-26 (Fla. 1982). This Petition concerns only the substantial competent evidence prong of the *Haines* inquiry and to the extent such evidence is not present in the Record below to support denial of the Application, the decision to deny the Application constitutes a departure from the essential requirements of law.

## VI. NATURE OF RELIEF SOUGHT

The Petitioner respectfully requests that this Court quash the decision of the Board below and remand with instructions to the Board to determine the Application consistent with this Court's opinion.

## VII. ARGUMENT

### A. THE BOARD'S DECISION WAS NOT SUPPORTED BY SUBSTANTIAL COMPETENT EVIDENCE

#### 1. Legal Standard

The fundamental issue before this Court is whether the record contains the requisite competent substantial evidence that is sufficiently relevant and material to support the Board's denial of the Application. The primary role of the circuit court, acting in its appellate capacity, is to assay the record in order to determine whether or not competent substantial evidence exists in the record to support the Board's decision. *Broward County v. G.B.V. Int'l Ltd.*, 787 So.2d 838, 844 (Fla. 2001) accord *City of Dania*, 761 So. 2d at 1093; *Heggs*, 658 So.2d at 530; *Vaillant*, 419 So.2d at 626. While a reviewing court may not reweigh evidence<sup>7</sup>, the essence of "competent substantial evidence" is "susceptible to misunderstanding." *Lee County v. Sunbelt Equities, II, L.P.*, 619 So. 2d 996, 1003 (Fla. 2d DCA 1993). In its *Snyder* decision, Florida Supreme Court held:

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<sup>7</sup> See e.g. *Education Dev. Center, Inc. v. City of West Palm Beach Zoning Board of Appeals*, 541 So. 2d 106, 108 (Fla. 1989) ("EDC"); *Heggs*, 658 So.2d at 530; *City of Dania*, 761 So.2d at 1093.

[I]n order to sustain the board's action, upon review by certiorari in the circuit court, it must be shown that there was competent substantial evidence **presented to the board** to support its ruling.

(emphasis added) *Snyder*, 627 So. 2d at 476. Thus, a court, upon certiorari review, cannot pay blind deference to a zoning authority's decision. Rather, the court must assay the record to determine that the "evidence relied upon to sustain the ultimate finding" is "sufficiently relevant and material that a reasonable mind would accept it as adequate to support the conclusion reached." *DeGroot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1997); See also *Jesus Fellowship, Inc. v. Miami-Dade County*, 752 So.2d 708, 709 (Fla. 3d DCA 2000) (holding that the "mere presence in the record" of maps, recommendations, and testimony in objection is not legally sufficient; the evidence must valid and relevant to support the Board's decision.)

Although the standard of review is deferential, the Board is required to support its decision with competent substantial evidence *presented to it during the public hearing*; not to do so constitutes fundamental error mandating that the Resolution be quashed. *Snyder*, 627 So. 2d at 476; accord *G.B.V. Int'l., Ltd.*, 787 So. 2d at 842. The Record is devoid of any competent substantial evidence relevant to the applicable Code criteria to

support the Board's decision and thus, fails to satisfy the standards set forth in *City of Dania*, *DeGroot*, and *Jesus Fellowship*<sup>8</sup>. Accordingly, the Board's decision departs from the essential requirements of law.

## 2. Burden of Proof

The Florida Supreme Court, in *G.B.V. Int'l, Ltd.*,<sup>9</sup> affirmed the burdens of proof established in *Irvine v. Duval County Planning Comm'n*<sup>10</sup>, relating to special exception zoning requests. The *G.V.B. Int'l* Court held that the burden was upon the local zoning authority:

to demonstrate by competent substantial evidence **presented at hearing and made part of the record** that the [application] did not meet such [zoning] standards and was, in fact, adverse to the public interest. *Id.* (emphasis supplied)

The Third District Court of Appeal in *Jesus Fellowship* cited *Irvine* with respect to burdens of proof as applied to special exception and unusual use zoning requests and held:

An applicant seeking special exceptions and unusual uses need only demonstrate to the decision-making body that **its proposal is consistent with the county's land use plan; that the uses are specifically authorized as special exceptions and unusual uses in the applicable zoning district; and that the requests meet with the applicable**

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<sup>8</sup> *Jesus Fellowship, Inc.*, 752 So. 2d at 709.

<sup>9</sup> 787 So. 2d 838 (Fla. 2001).

<sup>10</sup> 495 So. 2d 167 (Fla. 1986).

zoning code standards of review. If this is accomplished, then the application must be granted unless the opposition carries its burden, which is to demonstrate that the applicant's requests do not meet the standards and are in fact adverse to the public interest.

(emphasis supplied) *Id.* at 709. The *Jesus Fellowship* Court reaffirmed *DeGroot* holding that evidence and/or testimony must be "relevant valid evidence which supports the Commission's decision." *Id.* Further, the Code mandates that the special exception request for a WSSF be granted if it satisfies the criteria in §33-311(A)(18) and the underlying zoning district regulations. In the instant case, T-Mobile did not seek any deviations from the BU-1A zoning district regulations. (Ex. B; T.pp.11, 24).

### 3. Burden of Proof Applied

Applying the burdens of proof, requirements for competent substantial evidence and standards of review established in *G.V.B. Int'l, City of Dania, Irvine* and *Jesus Fellowship* to the instant case, the record contains undisputed evidence demonstrating that the Application is: 1) consistent with the County's CDMP (Ex. B p. 11); and 2) is a permitted special exception in the BU-1A zoning district pursuant to §33-63.2(c)(1) of the Code. *Id.*

T-Mobile also unequivocally satisfied the third prong of the *Jesus Fellowship* inquiry requiring that a special exception request satisfy the applicable zoning criteria. 752 So.2d at 709. Section 33-311(A)(18) of the Code sets forth pages of standards and criteria applicable to an application for a WSSF.

The Record before this Honorable Court demonstrates that T-Mobile has met the requirements for special exception set forth in §33-311(A)(18) for its Application that it sought approval of for nearly eight months. (See discussion *supra* pp.8-24). The Application received a Staff Recommendation for approval. (Ex. B). In addition to the Planning and Zoning staff's favorable recommendations, DERM, Public Works, Parks, Miami-Dade Transit Agency, Fire Rescue, Police, Schools and Aviation offered no objections to the Application. (Ex. B pp.10-11).

The aforescribed Staff members are among the administrative officials delegated the legislative authority under the Code to review, evaluate and make recommendations regarding zoning applications. Such review and evaluation may include interpreting Code provisions in a manner that is consistent with and furthers the intent of the Code and the CDMP. See *Legal Envt'l Assistance Foundation, Inc. v. Bd. of County Comm'rs of Brevard County*, 642 So. 2d 1081, 1083 (Fla. 1994). In accordance with Florida law, the expert opinions of

Staff constitute competent substantial evidence. *Metropolitan Dade County Bd. Of County Comm'rs v. Dusseau*, 725 So. 2d 1169, 1171 (Fla. 3d DCA 1998). Accordingly, a reviewing Court must defer to the County Staff's interpretation of its Code and CDMP unless the interpretation is clearly erroneous. *Legal Envt'l Assistance Foundation*, 642 So. 2d at 1083; accord, *Public Employees Relations Comm'n v. Dade Count Police Benevolent Ass'n*, 467 So. 2d 987, 989 (Fla. 1985).

In its recommendations, Staff found that the Application is consistent with the CDMP and complied with the standards and criteria contained in §33-311(A)(18), Code. (Ex. B pp.11-12). Staff expressly found that the Application was necessary to resolve the lack of wireless service coverage or capacity in the area. *Id.*

First, T-Mobile complied with each and every mitigation standard by designing the proposed WSSF as a flagpole. Such camouflaging is specifically designed and presumed to minimize visual and aesthetic impact by stealthing the facility to resemble a flagpole, rather than a tower. Other mitigation measures proposed included: 1) encasing all of the antennas so that the antennas are not visible; 2) locating the WSSF central to the Property to maximize setbacks; 3) screening the equipment with wood fencing and landscaping; 4) utilizing the minimum

height necessary to provide reliable service in the coverage gap area. Moreover, the flagpole WSSF provides 3 additional collocation opportunities<sup>8</sup> in addition to T-Mobile's antennas to reduce the future proliferation of towers in the area. (Ex. D; Ex. E; Ex. P; T.pp.7, 10, 19-23, 60).

Second, T-Mobile's expert testimony and evidence demonstrated the necessity of the flagpole WSSF as required by the Code. T-Mobile presented during the public hearing uncontroverted expert testimony and evidence that the proposed flagpole WSSF is necessary to close the "gap" and provide reliable PCS service. (Ex. O; Ex. P; Ex. Q; T.pp.19-23, 60). This "gap" includes not only area businesses on the Property itself and residential communities surrounding the Property, but also a lengthy segment of Miami Gardens Drive, thereby significantly impairing T-Mobile's ability to provide service to the traveling public. (Ex. P). Moreover, T-Mobile submitted evidence and testimony that there were no other viable alternative sites available for collocation or a new WSSF. (Ex. Q; Ex. S; Ex. T). In fact, T-Mobile submitted evidence that the

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<sup>8</sup>The provision of 3 additional collocation opportunities met and exceeded the County's express requirement for two additional collocation opportunities, and further satisfied the County's express policy to promote collocation and reduce future proliferation of wireless facilities. See §33-311(A)(18)5.c, Code.

Property was the only non-residential, non-government owned property in its search area. (T.pp.22-23; Ex. Q).

Third, T-Mobile also demonstrated that its proposed facilities complied with all the required health and safety standards including all applicable FCC health and safety standards, as well as Federal Aviation Authority and Miami-Dade County Aviation Regulations. (Ex. H; Ex. I). T-Mobile presented evidence, which was unchallenged, indicating that each facility only required a bi-weekly and/or monthly maintenance check and did not require any parking, parking space or parking facility, nor did such facilities impact any public services or public facilities. (Ex. B p.11; T.pp.12, 24, 48, 55-57). The Record contains substantial competent evidence demonstrating that the flagpole WSSF would be unmanned, silent in its operations and would not disrupt the peace and quiet and harmony of the surrounding residential areas or urban communities. (T.pp.12, 24).

Finally, T-Mobile demonstrated compliance with each and every environmental criteria by submitting a report prepared by ATC, its environmental, archeological and historical consultant, that the proposed facility would not have any adverse impact on environmental, archeological, historical, cultural or Indian

sites or resources. (Ex. K; Ex. L; Ex. M; Ex. N). In sum, the Record below clearly reflects that the Application met and exceeded each and every applicable standard and criteria governing the Application set forth in §33-311(A)(18).

Therefore, in accordance with *Irvine* and its progeny, the burden shifted to the opposition to demonstrate with competent substantial evidence that the Application did not satisfy the applicable zoning criteria and would contravene the enumerated public interest standards set forth in §33-311(A)(18), Code.

Although the zoning authority makes the initial determination of whether the applicable zoning standards have been satisfied, the courts, as a matter of law, determine whether there is competent substantial evidence to support the zoning authority's decision. *Jesus Fellowship*, 752 So. 2d at 708. While it is true that citizen testimony may be deemed competent substantial evidence when such testimony is fact-based and consistent with site plans, elevation drawings, and aerial photos the mere fact that the zoning authority had before it zoning maps and staff recommendations is not a sufficient basis for a denial. *Jesus Fellowship*, 752 So.2d at 709. Rather, the record must contain relevant evidence relating to the published Code criteria and standards that supports the Board's decision. *Id.*

The Board and the objecting neighbors failed to satisfy the opposition's legal burden. The objectors focused their opinions on upon unsubstantiated and irrelevant speculation alleging potential interference, structural, health, safety, parking and maintenance concerns, as well as questioning the necessity for the flagpole WSSF and speculating as to alternative sites and solutions. (T.pp.24-36). The evidence presented to answer each question and issue raised demonstrated unequivocally that the objectors statements were factually inaccurate, not relevant to the Code criteria or controverted by the expert opinion of T-Mobile's radio frequency engineer and the evidence presented in support of her opinion. (T.pp. 37-61). Further, the testimony regarding alleged health concerns is prohibited by the Telecommunications Act of 1996. 47 U.S.C. §332(c)(7)(B); (T.pp.26, 42). Accordingly, none of the objector's testimony is competent and reliance by the Board upon the same is not proper. (For a detailed discussion of the testimony presented by the objectors and statements made by the Board as well as the evidence and testimony presented in response to such objections please see *supra* at pp. 24-29).

It is fundamental principle of Florida zoning law that a local zoning board speaks through its resolution and not through individual opinions or concerns expressed by its members.

*Metropolitan Dade County v. Blumenthal*, 675 So.2d 598, 604 (Fla. 3d DCA 1995). Opinions of individual board members do not carry anymore weight than opinions of citizens which are uncorroborated by fact-based testimony or evidence. *Bob Harrell Properties, Inc. v. Orange County*, 7 Fla.L.Weekly C491 (Fla. 9<sup>th</sup> Cir. Ct., March 31, 2000). Similar to the questions, opinions, and concerns raised by the objectors, the individual opinions expressed by Board members with respect to the Application were either addressed by fact-based testimony or evidence in the record, or not relevant to the applicable Code criteria or were controverted by expert testimony. (T.pp.7-24, 37-61).

The Code does require that an Applicant demonstrate that its request is compliant with the published criteria. See §33-311(A)(18)(a), Purpose. The Code does not require the Applicant to demonstrate a benefit to the community. However, T-Mobile demonstrated and Staff concurred, that the flagpole WSSF would provide wireless service to its customers who live or travel within a 1.5-mile radius and further, would prevent the need for up to four additional WSSF structures of similar height in the immediate area, thus reducing proliferation of towers by designing a facility that provides co-location opportunities. (Ex. B, p.11; Ex. E p.C-3; Ex. P; T.pp.10, 23).

In sum, Staff, in their professional expertise, found that the zoning requests satisfied the Code's intent, purpose, standards and requirements along with findings that the requests would benefit the community. (*See generally* Ex. B).

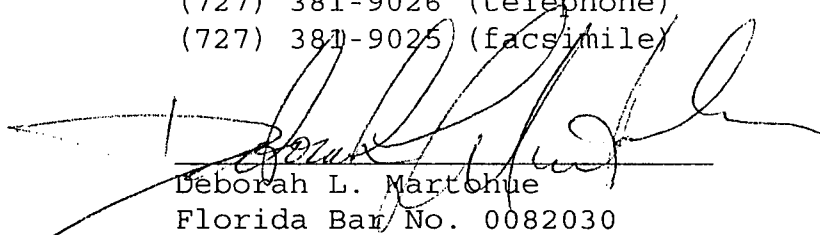
VIII. CONCLUSION

For the foregoing reasons contained herein, this Court should find that the Board failed to support its decision with competent substantial evidence and therefore is unlawful by failing to observe the essential requirements of law. In fact, the Record is devoid of any evidence to support denial of the Application and accordingly should be quashed.

WHEREFORE, Petitioner respectfully requests that this Court quash Resolution No.: CZAB 5-6-04 and remand to the Board for consideration of the Application in accordance with its opinion forthwith and any other relief this Court deems just and appropriate.

Respectfully submitted,

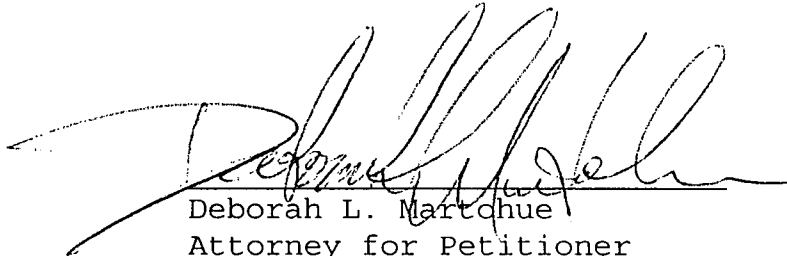
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Deborah L. Martohue  
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition for Writ of Certiorari was delivered via Federal Express the 30<sup>th</sup> day of June 2004, to: Robert Ginsberg, Esq., County Attorney, Miami-Dade County, 111 N.W. 1<sup>st</sup> Street, Suite 2810, Miami, Florida 33128-1993; Lou Salvat, Deputy Clerk, Miami-Dade County, 111 N.W. 1<sup>st</sup> Street, Suite 1210, Miami, Florida 33128-1993.

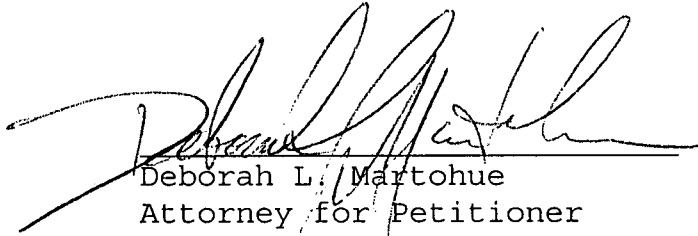


Deborah L. Martohue  
Attorney for Petitioner

Florida Bar No. 0082030

CERTIFICATE OF FONT COMPLIANCE

I HEREBY CERTIFY that the foregoing Response complies with the font requirements of Rule 9.210(2) *Florida Rules of Appellate Procedure*.



Deborah L. Martohue  
Attorney for Petitioner  
Florida Bar No. 0082030

1                    COMMUNITY ZONING APPEALS BOARD 5  
2                    AMERICAN HIGH SCHOOL - AUDITORIUM  
3                    18350 NW 67 Avenue, Hialeah  
4                    Thursday, May 20, 2004 at 7:00 p.m.

5  
6                    ITEM

7                    COUNTRY CLUB SHOPPING CENTER, INC./T-MOBILE  
8                    (03-353)

9  
10                   Members of Council

11                   Present

12                   Jorge I. Bonsenor, Chairperson  
13                   Archie E. McKay, Jr., Vice-Chair  
14                   Roberto P. Serrano  
15                   Paul O'Dell  
16                   Leonardo A. Perez  
17                   Sharon Franklin  
18                   Juan A. Garcia

19  
20                   COUNTY ATTORNEY'S OFFICE

21                   John McInnis, Assistant County Attorney

22                   STAFF

23                   Jorge Vital, Zoning Specialist  
24                   Jesus Davila, Evaluator  
25                   Earl Jones, Clerk  
                 Public Works

On Behalf of the Applicant

                 Deborah Martohue, Esq.

**ORIGINAL**

I N D E X  
SPEAKER & PAGE NUMBER  
COUNCIL MEMBERS

1 CHAIRMAN BONSENOR: 3-4, 6, 24-31, 33-36, 43, 47-51, 53,  
55, 57-63.  
2 COUNCILWOMAN FRANKLIN: 3, 29, 47-48, 55, 62.  
3 COUNCILMAN GARCIA: 3, 43-47, 62-63  
4 COUNCILMAN MCKAY: 3, 26, 47-50, 62.  
5 COUNCILMAN O'DELL: 3, 50-55, 62-63.  
6 COUNCILMAN PEREZ: 3, 55-57, 62.  
7 COUNCILMAN SERRANO: 3, 57, 62.

STAFF

10 MR. JONES: 3-4, 24, 62-63.  
11 MR. McINNIS: 3, 25-26, 34, 52.  
12 MR. VITAL: 5-6.

ON BEHALF OF THE APPLICANT

14 MS. MARTOHUE: 6-27, 37, 43-51, 53-61.  
15 MS. DONES: 19-22.

SUPPORTERS

OBJECTORS

17 MAYILET MARTINEZ: 24-27.  
18 LUIS LEON: 28-29, 35-36, 61.  
19 BARBARA HAGAN: 30-31.  
20 MARY ALMANZA: 31-35.  
21 JO PETTIS: 35.

1 CHAIRMAN BONSENOR: Are the court reporter and  
2 the county attorney present?

3 MR. McINNIS: Yes, sir.

4 CHAIRMAN BONSENOR: Yes, they are.

5 Ladies and Gentlemen, this meeting of the  
6 Community Council of the Country Club of Miami has come  
7 to order today, what is it, May 20, 2004.

8 At this time, please stand up for the pledge of  
9 allegiance.

10 (Pledge of Allegiance)

11 CHAIRMAN BONSENOR: Thank you. You may be  
12 seated.

13 Staff, please call the roll.

14 MR. JONES: Ms. Franklin?

15 COUNCILWOMAN FRANKLIN: Present.

16 MR. JONES: Mr. Garcia?

17 COUNCILMAN GARCIA: Present.

18 MR. JONES: Mr. McKay?

19 COUNCILMAN MCKAY: Present.

20 MR. JONES: Mr. O'Dell?

21 COUNCILMAN O'DELL: Present.

22 MR. JONES: Mr. Perez?

23 COUNCILMAN PEREZ: Present.

24 MR. JONES: Mr. Serrano?

25 COUNCILMAN SERRANO: Present.

1 MR. JONES: Mr. Bonsenor?

2 CHAIRMAN BONSENOR: Present.

3 MR. JONES: We have a quorum.

4 CHAIRMAN BONSENOR: Those of you present who  
5 wish to speak today must stand up and the court reporter  
6 will swear you in. Those of you present who wish to talk  
7 tonight, please stand up.

8 (Swearing in)

9 CHAIRMAN BONSENOR: Those of you who are  
10 lobbyists should have been registered with Miami-Dade  
11 County Clerk of Board's Office prior to this hearing.

12 Is there anyone present this evening who wishes  
13 to defer or withdraw an application, please come forward  
14 at this time and state your name and address, for the  
15 record. There's only one item. There's none. The Chair  
16 recognizes that there are -- there is no deferral or  
17 withdrawal at this time.

18 When I call your item, please step up to the  
19 podium and state your name and address clearly for the  
20 record. I will then proceed to call those of you in  
21 support of the application and then I will call for  
22 objectors. Those of you here who wish to speak will  
23 state your name and address. For those of you speaking,  
24 I will ask you that you make your presentation short,  
25 non-repetitive, as we are limited on time.

1                   Staff, please, disclaimer.

2                   MR. VITAL: In accordance with the code of  
3                   Miami-Dade County, all items to be heard today have been  
4                   legally advertised in the newspaper, notices have been  
5                   mailed and the properties have been posted. Additional  
6                   copies of the agenda are available here at the meeting.  
7                   Items will be called up to be heard by agenda number and  
8                   name of applicant.

9                   "The record of the hearing on each application  
10                  will include the records of the Department of Planning  
11                  and Zoning. All these items are physically present  
12                  today, available to all interested parties and available  
13                  to the Members of the Board, who examine items from the  
14                  record during the hearing.

15                  "Parties have the right of cross-examination.

16                  "This statement, along with the fact that all  
17                  witnesses have been sworn, should be included in any  
18                  transcript of all or any part of these proceedings.

19                  "In addition, the following departments have  
20                  representatives present here at the meeting to address  
21                  any questions: The Department of Public Works, the  
22                  Department of Planning & Zoning, the County Attorney's  
23                  Office.

24                  "Any person making impertinent or slanderous  
25                  remarks or who becomes boisterous while addressing the

1 Community Zoning Appeal's Board shall be barred from  
2 further audience before the Zoning Community Appeals  
3 Board by the presiding officer unless permission to  
4 continue or again address the Board be granted by the  
5 majority vote of the Board members present.

6 "The number of filed protests and waivers on  
7 each application will be read into the record at the time  
8 of hearing as each application is read. Those items not  
9 heard prior to the ending time for this meeting will be  
10 deferred to the next available zoning hearing meeting  
11 date for this Board."

12 CHAIRMAN BONSENOR: Thank you.

13 Staff, call the first item, please, first and  
14 only item.

15 MR. VITAL: Item A, Country Club Shopping  
16 Center, T-Mobile, 03-353, zero protests, zero waivers.

17 MS. MARTOHUE: Good evening, my name is Deborah  
18 Martohue. I represent T-Mobile, the applicant, with  
19 Hayes & Martohue, 5959 Central Avenue, Suite 104, St.  
20 Petersburg, Florida. I'm here on behalf of Omnipoint  
21 Holdings, doing business as T-Mobile tonight, the  
22 applicant. I'm here with Mike Mejido, who just passed  
23 our hearing booklets out to you for you to follow along  
24 with the presentation. I'm here with Steve Emberlin, Ana  
25 Dones and Steve Morin, representatives of T-Mobile.

1                   This is a deferral from the Board's April 22nd  
2                   meeting for lack of court reporter.

3                   T-Mobile is an FCC licensed national provider of  
4                   cellular phone service. T-Mobile is one of the fastest  
5                   growing wireless service providers in the United States  
6                   operating exclusively on all digital technology.  
7                   T-Mobile employs 22,000 people in the United States and  
8                   1100 people right here in South Florida. We have 13.1  
9                   million subscribers in the United States and 315,000  
10                  right here in South Florida. We are contributor to this  
11                  economy here, employ here and we pay taxes here.

12                  We are requesting a special exception to permit  
13                  a stealth flagpole wireless facility and staff is  
14                  recommending approval of this application, which I'm sure  
15                  you'll find in your agenda packet, but we've also  
16                  included it in our Tab 1 of our hearing packet.

17                  The test that we are required to meet tonight  
18                  is, first, we need to show you that special exception is  
19                  consistent with the Comprehensive Development Master  
20                  Plan; that the special exception is permitted in the  
21                  BU-1A Zoning District and that this wireless facility  
22                  satisfies the published code criteria contained in  
23                  Section 33-311(A)(18). Our presentation will demonstrate  
24                  the application meets all three prongs of this test.

25                  The property location is at 7660 Northwest 186

1 Street, also known as the Country Club Shopping Center.  
2 The property is zoned BU-1A and a wireless service  
3 facility is permitted special exception use in the BU-1A  
4 Zoning District.

5 The Comprehensive Development Master Plan  
6 designation is business and office and a wireless service  
7 facility is also a permitted use in all urban land  
8 categories, including business and office, particularly  
9 activity nodes along major thoroughfares and staff has  
10 made a finding of consistency with the Comprehensive  
11 Development Master Plan. You will see that at Tab 2.

12 Mike is going to take us through the site plan  
13 in the -- maybe first we can start with the aerial. I'm  
14 sorry, we're going to go with the surrounding zoning.  
15 Rather than a zoning map, I think an aerial can better  
16 show you what's going on in this particular area and this  
17 is our site right here. We have several aerials since  
18 it's right up in the corner of this aerial, but to the  
19 north, we have BU-1A and RU-4L, which is a restaurant.  
20 We're 400 feet from the nearest single-family and we are  
21 275 feet from the north property line, so this is where  
22 we are. We wanted to bring you all the aerials so you  
23 can get a better view of what is surrounding us here.

24 To the south is RU-3M, which is townhomes, but  
25 our facility is located 300 feet from the nearest

1 townhome, 237 feet from the south property line. That's  
2 almost two-and-a-half times the height of the flagpole  
3 facility.

4 To the east, we have BU-1A, which is commercial  
5 and office centers, and more than 1800 feet to the  
6 nearest residential property. We're 252 feet to the east  
7 property line, again, about two-and-a-half times our  
8 facility height.

9 To the west -- you might want to get the west  
10 aerials. To the west, again, you can see that we have  
11 RU-3, AU and RU-1, which is the fire station, the  
12 existing fire station, it has an existing  
13 telecommunications tower. It's a tower. It's not a  
14 private tower. It's owned by Miami-Dade County. There's  
15 a vacant parcel.

16 And then further west, there's some  
17 single-family homes. There's a canal right here  
18 immediately to the west that buffers our site from  
19 properties to the west. To the west we're 600 feet from  
20 the nearest single-family.

21 The shopping center is four-and-a-half acres, so  
22 I guess we can go to the site plan. The shopping center  
23 here is four-and-a-half acres in size, but our lease  
24 parcel is only 480 square feet. It's 25 feet by 34 feet.  
25 It's very small. It's located towards the central

1 portion of the shopping center and it's located in the  
2 interior of the parking lot with one of the islands right  
3 next to it.

4 The base of the flagpole where the equipment is  
5 located is screened with landscaping and a six foot high  
6 fence as required by the code and the actual equipment  
7 space is only 150 square feet. It's a 10 by 15 foot pad.

8 You can see here that we're proposing a 100 foot  
9 height stealth flagpole facility to accommodate Team  
10 Mobile plus three additional carriers. So in total there  
11 will be four carriers on this -- potentially four  
12 carriers on this facility to reduce proliferation of any  
13 additional applications in your area to cover this  
14 particular residential community and it also complies  
15 with the county's expressed co-location policy. In fact,  
16 for a facility of this height, the county requires an  
17 additional two co-locators and we are providing three.

18 As you can see by the photo simulations here,  
19 the antennas are completely located inside the flagpole.  
20 They are not visible. They are completely encased inside  
21 and that's what makes it a self-facility.

22 So the final prong would be to show you that we  
23 have complied with all of the zoning criteria that's  
24 contained in Section 33-311(A)(18). This is the new  
25 wireless ordinance that was adopted on July 8, 2003. The

1 requirements of that ordinance are contained in your  
2 staff recommendation beginning, I believe, at Page 3 and  
3 going through Page 7. So it's quite an extensive list of  
4 criteria.

5 We have elected to go under that section of the  
6 code exclusively. We have the option to also go under  
7 Section 33-311(A)(3), but we are declining that option  
8 and that is our election. We are only going to go under  
9 (A)(18). Again, staff has made a finding of consistency  
10 with the CDMP, which is one of those code requirements.

11 Since this is the first time you're hearing one  
12 of these applications, bear with me, I'm going to walk  
13 you through each one of the criteria to familiarize  
14 yourself and answer any questions you might have in terms  
15 of our compliance.

16 The stealth flagpole facility and its equipment  
17 does comply with all of the underlying BU-1A lot coverage  
18 standards. There will be no outdoor lighting fixtures  
19 that cast light on adjoining parcels of land at an  
20 intensity greater than what is permitted by code. In  
21 fact, this Board -- we're intending to uplight the  
22 flagpole, because that's a federal law requirement. If  
23 you put a flag on a flagpole, you need to have it lit.  
24 If this Board so chooses to not have uplighting, we do  
25 not have to have the flag on there. That will be your

1 choice. I've done it both ways in other communities.  
2 Some of them just want the pole and some of them want a  
3 flag on it and we're acceptable to either option.

4 Because it is located in the interior of a  
5 parking lot, obviously we're providing adequate parking,  
6 loading, ingress and egress as shown on the site plan.  
7 It's right adjacent to the drive aisles and we're not  
8 blocking any vehicular or pedestrian traffic on abutting  
9 streets, 'cause it's interior to a parking lot, and we're  
10 providing adequate ingress and egress for vehicles that  
11 service the facility. This facility is unmanned and it  
12 is serviced approximately every two weeks.

13 The facility is accessible by fire, police and  
14 emergency services as required by the code. The facility  
15 meets and exceeds the 110 percent of the height, the  
16 county likes to call the fall zone factor, which in this  
17 case it's very simple math. It's 100 feet tall, 110  
18 percent, it's a minimum 110 feet setback from all  
19 property lines. That requirement, they feel, meets the  
20 safety requirements that in the event -- and I promise  
21 you we do not design these facilities to fail, but in the  
22 event of a catastrophic event and the entire facility,  
23 worse case scenario, was to fail at its base, which is  
24 highly unlikely, it would then fall and be contained  
25 wholly within the parent tract, which is what the 110

1 percent rule is all about.

2 We described the setbacks to you earlier. We  
3 meet and exceed those from the north, south, east and  
4 west property lines.

5 As stated earlier, the actual equipment is  
6 surrounded by a wood fence and the unfinished side of  
7 that fence is directed inward. The finished side of the  
8 fence is directed outward toward the parking lot.

9 The landscaping is shown on the landscape plan  
10 and we have been providing that in accordance with the  
11 code. We are not seeking any variances from any setbacks  
12 or landscaping requirements.

13 The facility does comply with all Miami-Dade and  
14 FAA aviation requirements and we provided you that  
15 information at Tab 9 of your hearing booklet.

16 The safe sight distance triangle requirement do  
17 not apply in this case, because we're located in the  
18 interior of the parking lot. We're not located in any  
19 ingress or egress along the roadway that the safe sight  
20 triangle distance requirements apply.

21 We are also required to do things like  
22 environmental studies, archeological studies, historical  
23 studies. We provided those to you in your hearing  
24 booklet at Tab 8. We had those studies conducted. We  
25 are not in an officially designated natural forest

1 community. We're not in or officially designated  
2 wildlife preserve or on an Indian religious site. We  
3 have provided all those studies to staff and they're part  
4 of the record.

5 We have also conducted a historical analysis and  
6 we are not affecting any historical sites, archeological  
7 sites that are listed on the national register of  
8 historical places or designated by either Miami-Dade  
9 County or the State of Florida.

10 The next standard in your booklet -- and we're  
11 trying to find ways, better ways, to explain to the  
12 community at large and the boards that we present to how  
13 it is that we go about selecting our sites and designing  
14 our networks.

15 We developed a short Power presentation, which I  
16 have on disk for the record, I'll give you later, Earl,  
17 and we'd like to kind of -- we'd like to walk everyone  
18 here and this Board through the general principles and  
19 how we go about designing our system. Then I'm going to  
20 have our RF -- our radio frequency engineer come up and  
21 talk about the specifics of this site and how we  
22 identified where our problem was and how we needed to fix  
23 it.

24 So we start right here. This first graphic  
25 shows a typical area in our wireless network. Again,

1     this is conceptual and we just want to go through the  
2     principles of it. The red hatched area shows the area  
3     where we provide service. The white area show where we  
4     have no service. The next graphic shows how a typical  
5     single site works and you can see in the center there's a  
6     green triangle which represents a tower and the antennas  
7     on that tower transmit and receive signals in a tri-lobed  
8     or wide configuration. And as each individual site is  
9     integrated into the network, you can see we start to form  
10    a honeycomb effect. You will note on this graphic that  
11    none of the red hatched areas overlap each other. We  
12    cannot overlap our signals because that would create  
13    signal interference.

14                 And what that means to you in everyday life, and  
15    I'm sure you've all experienced it, a signal interference  
16    can be dropped calls. It can be echoing. It can be like  
17    when you're sounding like you're under water, in a  
18    tunnel. It can be crossover conversations. Those are  
19    things we try to avoid. It's poor quality service.

20                 The next graphic highlights the area in between  
21    the existing sites where we have no service. We like to  
22    call that a dead spot. For you it's a dropped call or  
23    where you get no signal service, you have no bars. It's  
24    a gap -- what we call a gap in coverage.

25                 In order to solve this lack of service, which

1 has been identified by our engineers usually through  
2 customer complaints or we do drive test data out in the  
3 field, we use our propagation tools, but we always verify  
4 in the field. We develop an area what we call a search  
5 ring. So we identify the dead spot.

6 And the next graphic will show that to solve at  
7 least a portion of this problem, we've identified a  
8 search ring. And when we've done that, you'll see it's  
9 quite small, usually in relation to the area that we'll  
10 be covering. Typically they're about 800 feet by a  
11 quarter of a mile in diameter. In relation to the actual  
12 coverage area, could be that we have to provide service  
13 to a mile-and-a-half to three miles wide. So we like to  
14 centrally locate our tower within the problem area to  
15 maximize solving the problem over the greatest distance.

16 Another factor is that is the height. When you  
17 are already in a system like we are right here, you have  
18 to adjust. You get a height range, so that you don't go  
19 too far and overlap and you go far enough, so that you're  
20 solving the whole problem. We liken it to the flashlight  
21 example. If you took a flashlight and turned it on and  
22 you raised and lowered it on a surface, you can see that  
23 the circumstance of the light gets wider as you go  
24 taller, so that's generally what happens for us. The  
25 taller we go, more coverage we get. So we have to make

1       sure we don't overlap into already areas that are  
2       covered.

3               So once that search ring is identified, we send  
4       out a site acquisition specialist. They go out. They  
5       drive the entire area and they look for possibilities for  
6       us to locate.

7               Typically we co-locate. In fact, we were going  
8       to bring a graphic tonight and we forgot. I think last  
9       year in Miami-Dade County, in this area, correct me if  
10      I'm wrong, Mandy, we were successful in co-locating our  
11      facilities, which is basically getting on another  
12      rooftop, another tower, something else that was existing,  
13      86 percent of the time. Only 14 percent of the time have  
14      we had to come in and design a new site and request an  
15      application like this to build a new site. In fact, in  
16      the new market last year over in Lee County, we were  
17      successful -- we want to point this out to you because I  
18      know there's a perception out there that we're in the  
19      tower building business. We're not. It is the last  
20      resort. We actually deployed an entire Phase 1 in Lee  
21      County last year, 33 sites, co-locations, no new towers.  
22      Unfortunately, that's not always -- we can't always  
23      succeed and we have to come in and make these request to  
24      complete our network in certain areas.

25              Anyway, engineer gives the site acquisition

1 certain criteria to go look for. We've gotten a certain  
2 gap in coverage, how tall, what is the range of height  
3 that we need to solve this problem, depending on what's  
4 existing in the area. They go out, they drive it, they  
5 look for buildings, they look for churches, they look for  
6 existing towers in the area.

7 The next graphic shows here, in fact, a typical  
8 example of the green triangles where there might be  
9 existing towers, but you can see they're not in our  
10 search ring. They're already in an existing area that  
11 has coverage. We can't utilize them because they're  
12 going to cause signal interference and they don't solve  
13 the problem. So a lot of times we hear at hearings,  
14 people go, "Well, why don't you go and co-locate here?  
15 We know of a tower over there." Trust me, if we could  
16 have gone over there and done that, we would have. It's  
17 a lot less expensive and time consuming option.

18 The final graphic shows the ideal candidate and  
19 that's a tower or a site somewhere centrally located,  
20 preferably in the search ring. It could be an existing  
21 rooftop, a tower. The analysis that we go through is,  
22 what's the height of anything existing out there? Does  
23 that meet our needs? Does it have structural capacity?  
24 If we can't find anything existing, we look for  
25 commercial or industrial zoned sites and then we look at

1 the size of the site, because we have pretty strict  
2 setback requirements and we don't want to come in here  
3 and ask for variances.

4 So now that we have about four or five pages of  
5 zoning criteria. It's quite an analysis to find a site  
6 that we could actually come in here and say, "We don't  
7 need any variances." We need special a exception, we  
8 need our site plan approved, but we meet all of the  
9 criteria. And that basically gives you the broad picture  
10 of the analysis that we go through generally on every  
11 site.

12 And I'm going to invite Ana Dones. I'm going to  
13 introduce her. She's our radio frequency engineer.  
14 She's going to testify to the specifics of need on this  
15 site. And we are requesting the 100-foot stealth  
16 flagpole facility.

17 For the record, we've already submitted  
18 Ms. Dona's resume to the county, but I have another copy  
19 here that I'll give the clerk. And Ana.

20 MS. DONES: Thank you. Good evening, my name is  
21 Ana Dones, RF engineer for T-Mobile, Miami market.

22 I want to take this moment to discuss the  
23 proposal to build a flagpole in the Country Club Shopping  
24 Center. As Deborah already discussed how we look for an  
25 area where we need to build a site, I really don't have

1 to go over it.

2 So when we were looking, we have -- as you can  
3 see, we have here a map that has a predictive analysis  
4 plot where it helps us, it helps the engineer to look at  
5 the area where we need to build any type of facility.

6 In this area, you see all the different sites  
7 that we have around the proposal site that we want to  
8 build. Each site covers X amount of area, but it doesn't  
9 help us to complete our coverage objective to cover all  
10 this area where we do have a lot of customers.

11 And we -- this plot help us to -- let me move a  
12 little bit. As you can see here, we conducted a drive  
13 test to analyze the area where we really need to build  
14 some type of facility. We have a legend in here that  
15 explains that the red dot meets adequate level for  
16 in-building coverage, the green adequate level for in-car  
17 coverage and the black adequate level for in-car  
18 coverage. You can see that we have --

19 MS. MARTOHUE: Not adequate. Inadequate.

20 MS. DONES: Oh, I'm sorry, inadequate. You can  
21 see that we have a lot of inadequate level in-car  
22 coverage. So we decided that we had to build some type  
23 of facility to co-locate our equipment in the area.

24 By building this flagpole, we will improve the  
25 coverage area in the -- around the Country Club Shopping

1 Center. All this red dots -- I mean, black dots will  
2 become the red ones that we see in other facilities.

3 As an example, we have one here that we have a  
4 facility and we have a lot of red and the green. In this  
5 area, we have a lot of black, because we don't have any  
6 facility in the area. And this is how T-Mobile, with  
7 this typical plot, help us to visualize our need in the  
8 network. We don't build anywhere. We just build where  
9 we need to, where we have the need to build something.

10 MS. MARTOHUE: Ana, can I ask you a couple of  
11 questions for clarification? Stand here with the mike.  
12 I'm going to ask her a couple of questions for  
13 clarification.

14 The green and the red hatch areas, they're  
15 generated by a propagation -- an engineering propagation  
16 tool, correct?

17 MS. DONES: Oh, yes.

18 MS. MARTOHUE: And that's just theory? This  
19 is --

20 MS. DONES: Yeah, this is a theory.

21 MS. MARTOHUE: Predictive?

22 MS. DONES: Yeah, a predictive tool. This is  
23 something that we would like to see when the tool  
24 predicts this.

25 MS. MARTOHUE: But, unfortunately -- the drive

1 test data is actual field test data; is that correct?

2 MS. DONES: That is correct, it's the actual --  
3 it's what we see out there right now. You use your  
4 mobile, your cellular phone, and this is what you're  
5 going to have and you're going to have a lot of problems  
6 while you're trying to make a call.

7 MS. MARTOHUE: Thank you.

8 MS. DONES: Thank you.

9 MS. MARTOHUE: So as you can see, we use tools  
10 like everyone else, but they are just a tool, and then we  
11 go out and actually drive test and use field data to see  
12 where the problems are that we get complaints about. One  
13 of the -- you'll see in your booklet, we did look. There  
14 were two existing potential candidates in this area and I  
15 think they're marked on the aerial, Mike. One is right  
16 across the street and it's owned by Miami-Dade County.  
17 And we would have loved to have co-located on that  
18 facility, it's at the fire station, but they have a  
19 policy of not co-locating and not allowing any private  
20 co-locators. We, regardless of that policy, did inquire.  
21 I believe that letter is Tab 5. Yes, we did inquire. We  
22 asked, they denied our co-location request.

23 The other co-location possibility that we did  
24 look at was a rooftop at 7055. It's on the street map,  
25 which we provided at Tab 6. There's a fold-out at Tab 6

1       that will show you -- right, it's in this area, but it's  
2       better shown at Tab 6, if you pull that out. We show you  
3       in red our proposed site in the search ring. The  
4       Miami-Dade site is right across the street in the green  
5       diamond. We couldn't go there. Right outside of the  
6       search ring to the right-hand side, you'll see another  
7       green diamond. It's labeled rooftop building. It's at  
8       7055 Northwest 186 Street. We did look at that.  
9       Unfortunately, that building was only 50 feet in height  
10      and it was outside of the search ring. So because of  
11      height and distance, it wasn't going to solve our  
12      problem.

13               There was no other -- everything is pretty  
14      residential or low rise in the area. All of the blue  
15      diamonds on this map will show you there are other  
16      facilities in the area. We're co-located on all of them  
17      and it still doesn't solve our problem in this area. So  
18      as Ana said, this facility will allow us to provide for a  
19      lack of service and provide better reliable service,  
20      including E-911 service. The tower is designed for  
21      co-locators. It's a stealth flagpole. We've shown you  
22      the photo simulations. So we've done everything that we  
23      can to minimize the visual impact, both of the facility  
24      itself, as well as the equipment building by screening it  
25      with a wooden fence and including landscape.

1                   We meet and exceed all setback requirements.  
2                   We're not requesting any variances. We're an unmanned  
3                   facility, so we don't generate any impacts on public  
4                   services and infrastructure. Again, staff recommends  
5                   approval. There are no objections from DERM, Public  
6                   Works, Parks, MDTA, Fire-Rescue, Police or Schools. We  
7                   are requesting approval of the applications with the  
8                   conditions set forth by the staff in your recommendation.  
9                   We're here to answer any questions and we would like to  
10                  reserve time for rebuttal, if there's anybody in the  
11                  audience who would have comment. And certainly we'll  
12                  have our engineers and our experts available for  
13                  questions from this Board at whatever time you choose.  
14                  Thank you.

15                  CHAIRMAN BONSENOR: Thank you.

16                  Is there anyone present in favor of this  
17                  application that wants to come forward? Have you been  
18                  sworn in? Have you been sworn in?

19                  MS. MARTINEZ: Oh, when I came in?

20                  CHAIRMAN BONSENOR: Yes.

21                  MS. MARTINEZ: But I'll do it again.

22                  CHAIRMAN BONSENOR: No, no, it's okay. Only  
23                  once.

24                  MS. MARTINEZ: All right.

25                  MR. JONES: Please sign it.

1 MS. MARTINEZ: I signed in already. Here?

2 Okay, hello, my name is --

3 CHAIRMAN BONSENOR: You are in support of the  
4 application?

5 MS. MARTINEZ: No, I'm against.

6 CHAIRMAN BONSENOR: No, I'm calling support of  
7 the application. I'm sorry.

8 MS. MARTINEZ: Oh, no. Sorry.

9 CHAIRMAN BONSENOR: Anybody here? None. Okay,  
10 Chair recognizes there is no support for the application.  
11 Anybody against this application? Please stand up again.  
12 I'm sorry.

13 MS. MARTINEZ: Hello, my name is Mayilet  
14 Martinez. I'm a resident in this community. I need to  
15 bring this down.

16 MS. MARTOHUE: What is her address?

17 MS. MARTINEZ: My address is 7732 Northwest 194  
18 Street. The community that I live in is Spanish Lakes  
19 and I'm a committee chair. And I'm represented here by  
20 my board of director's president, Mary Almanza, who is  
21 sitting right here.

22 My main issue with the antenna is the radiation.  
23 I know that some of you might feel that --

24 MR. MCINNIS: Mr. Chairman.

25 CHAIRMAN BONSENOR: Yes.

1           MR. McINNIS: Under federal law, which applies  
2 here, you cannot base your decision and you shouldn't  
3 really entertain any testimony pertaining to radiation or  
4 the health effects or the alleged health effects of  
5 facilities of this type.

6           CHAIRMAN BONSENOR: Okay, I wasn't aware of  
7 that.

8           Okay, can you rephrase that. If you are talking  
9 about any health hazard, it has to be waived and simply  
10 talk about the zoning issue.

11          MS. MARTINEZ: Okay, can I -- well, can I just  
12 not say the word radiation?

13          CHAIRMAN BONSENOR: Well, you have to --

14          MR. McINNIS: You can't talk about the health.  
15 If I may, Mr. Chairman.

16          CHAIRMAN BONSENOR: Go ahead. Go ahead.

17          MR. McINNIS: You can't talk about the health  
18 effects of the facility. That's the way that the law is  
19 written and it specifically says that you can't talk  
20 about -- the Board can't base its decision on testimony  
21 evidence pertaining --

22          MS. MARTINEZ: Okay.

23          MR. McINNIS: -- to adverse health effects.

24          MS. MARTINEZ: Okay. Then the only thing that I  
25 would need to ask everybody who's sitting here, who's

1 going to make a decision today, is just to ask  
2 yourselves, if this antenna was going to be placed in  
3 your community, a community that you have -- they have a  
4 shopping center, where there's a Pizza Hut and a karate  
5 place and places that your kids go to almost everyday,  
6 would you want that antenna in your community?

7 CHAIRMAN BONSENOR: This is our community.

8 MS. MARTINEZ: Okay.

9 CHAIRMAN BONSENOR: We live here.

10 MS. MARTINEZ: Okay. Then that's the only thing  
11 that I would like for you to think about.

12 One last comment, that fence, it's supposed to  
13 be six feet tall, is that a six feet tall fence?

14 MS. MARTOHUE: Yes.

15 CHAIRMAN BONSENOR: She'll answer that later on.  
16 Let's not --

17 MS. MARTINEZ: Let's not go there? Okay, I  
18 thank you for your time.

19 CHAIRMAN BONSENOR: Okay, next, please.

20 MR. LEON: My name is Luis Leon. I'm a resident  
21 also at Spanish Lakes, 7869 Northwest 194 Street.  
22 Actually, my question was pertaining to the fence also.  
23 I noticed the fence was seven-and-a-half foot height and  
24 I understand she said the safe sight distance triangle  
25 doesn't really apply here, but I kind of think it does,

1 because you got to people that are going to be parking  
2 next to these fences that are going to have trouble  
3 backing out, if you have cars going down.

4 CHAIRMAN BONSENOR: Oh, if I may, that's a  
5 picture -- excuse me, you should not answer any  
6 questions. Basically, the picture will show you that  
7 it's going to be a flagpole, so that can answer your  
8 question.

9 MR. LEON: No, I understand that. I'm talking  
10 about the finance.

11 CHAIRMAN BONSENOR: Okay, you're talking about  
12 the fence.

13 MR. LEON: If you mind, can I show you on the  
14 plan?

15 CHAIRMAN BONSENOR: Sure. You're talking to us  
16 anyway.

17 MR. LEON: Well, on the picture, either, both of  
18 them, you can see on the plan itself, it says that the  
19 fence is seven-and-a-half foot high. It says here  
20 T-Mobile 15 by 28, seven-and-a-half. Is that inch or  
21 foot?

22 CHAIRMAN BONSENOR: Should be feet.

23 MR. LEON: Yeah, it says inch, but it says -- I  
24 mean, I imagine it's feet, so fence compound. If you  
25 take a look at the picture that they took.

1                   CHAIRMAN BONSENOR: Yeah, it's right there.

2                   MR. LEON: Right here you can see anybody that  
3 parks either in these spots here, when they back out,  
4 they're going to have -- they might have conflicts with  
5 any cars coming either at a high velocity or low velocity  
6 where they can still be hit by them.

7                   CHAIRMAN BONSENOR: No, no, I'm trying to be  
8 fair here, okay?

9                   MR. LEON: There are situations --

10                  CHAIRMAN BONSENOR: If there's a van parked next  
11 to you, you wouldn't be able to see anything either, a  
12 van, you know, one of those big vans.

13                  MR. LEON: There are windows. You can see.

14                  COUNCILWOMAN FRANKLIN: I have a very low car  
15 and I have a problem with that.

16                  MR. LEON: If you think about it, there are many  
17 areas where --

18                  CHAIRMAN BONSENOR: I understand your point.

19                  MR. LEON: I mean, they could have put a  
20 dumpster here. You know what I mean? This is the  
21 equivalent of putting a dumpster here. If you imagine  
22 parking next to a dumpster here, it is uncomfortable  
23 getting out of there. You would have a hard time. Just  
24 think about it. I'm not telling you guys to get rid of  
25 this. I'm saying either lower the fence or relocate it

1 maybe on top of the building, if you can, or somewhere  
2 else where it's more out of the way or in the corner.  
3 Thank you.

4 CHAIRMAN BONSENOR: Next, please.

5 MS. HAGAN: Barbara Hagan, 7336 Bay Hill Drive,  
6 Country Club of Miami. I know you're all tired of me,  
7 but --

8 CHAIRMAN BONSENOR: No, no, no, don't say that.

9 MS. HAGAN: We thought two or three years ago  
10 there was going to be a cell tower in front of the  
11 Presbyterian Church on 186 and that was the only place  
12 for the three companies with the cell tower, the only  
13 place they could possibly put this to service all their  
14 customers. Well, we worked with them with their cross  
15 that looked like it was on a kite way up 100 feet up in  
16 the air. We worked with them to change it to look like a  
17 very nice bell tower and there was lots of room around  
18 there, and they even promised help back into the  
19 community, but then all of a sudden, it was gone because  
20 they didn't have enough money then to build it.

21 There are cell towers in existence that don't  
22 come before zoning. This is something, a special  
23 exception. If you look behind the Walgreens and  
24 different buildings, you'll see cell towers there.

25 CHAIRMAN BONSENOR: Yeah.

1 MS. HAGAN: What worries me about this cell  
2 tower -- I don't care what they say, there is that fire  
3 department there and there is that Dade County tower.  
4 You know when you get dead spots on your cell phone, but  
5 God forbid if you have one -- anything interfering with  
6 any call, with our 911 services or with that firehouse,  
7 with that station there, I mean, what is more necessary?

8 You can see in the hearings on the 911 in New  
9 York that communications weren't adequate at a time of a  
10 disaster. I just feel with that Dade County tower there,  
11 this is just -- I would say right next to it, if it's in  
12 that Pizza Hut Shopping Center. You know where the fire  
13 department is, there's not that much room for it and  
14 we're just crowding up all our shopping centers. If it  
15 was allowed by law, they wouldn't be here. This is a  
16 special exception and I don't think you should grant it.  
17 I rather save a life than miss a phone call.

18 CHAIRMAN BONSENOR: Thank you, Ms. Hagan.  
19 Next, please.

20 MS. ALMANZA: My name is Mary Almanza,  
21 representing Spanish Lakes Homeowners Association. I  
22 live at 19415 Northwest 79 Place.

23 First of all, I second Barbara's sentiment as  
24 far as that being a possible interference with our  
25 emergency signals and also I want to speak to Luis's

1 concern, not just from a standpoint of not being able to  
2 see and back out from that area, but you're taking a  
3 parking lot that is already very small and very difficult  
4 to maneuver in and you're taking away more space for the  
5 cars to be able to park and maneuver around in that  
6 parking lot, which creates then just a further hazard to  
7 get around within that area and to get in and out of the  
8 shops.

9           Aside from that, the concern is also, of course,  
10 for, as Barbara alluded to, just continually having more  
11 and more and more cell phone towers. While I love my  
12 cell phone, I don't -- I don't necessarily want to  
13 improve the service just at the risk of, one, the  
14 sightliness of my area. I think the towers become  
15 unsightly. And as we continue to have more and more  
16 high-rise towers in and around our area, we begin to just  
17 look like an electrical field. Now, in this case, the  
18 design is made to where, at least if there's a flag on  
19 it, it says something for our country. If that flag  
20 wasn't on there, I would say then it's just a pole  
21 sticking up in the air.

22           My question would be -- and I don't claim to  
23 know anything about the technologies and if one would  
24 interfere with the other, but we already have very tall,  
25 perhaps not tall enough, but lightposts that go along

1 Miami Gardens. I don't know if there's any way for -- if  
2 there had to be some allowance for the wireless  
3 providers, if they could utilize the lightposts that are  
4 already in place. Again, I don't claim to know anything  
5 about those two technologies and how the two might  
6 conflict with each other or be able to work with each  
7 other.

8 My further point is that in looking at their map  
9 and in the ring -- what was that ring? Oh, I'm not  
10 allowed to ask questions. The search ring, their area of  
11 dead zone was very large and their search ring only  
12 allowed them, what I would estimate to solve their  
13 problem, about a third of the area. Again, cluttering it  
14 in the same area where they already have pretty good  
15 coverage. So why does it have to be in this spot, I  
16 would say, but in any of the spots along the area where  
17 their dead zone is, it would still have the same issue,  
18 the same effect on the general area of this community, as  
19 far as there being more towers along Miami Gardens and  
20 the safety hazards that --

21 CHAIRMAN BONSENOR: No safety.

22 MS. ALMANZA: Not safety, safety in the sense of  
23 interfering with the Dade County towers that are there  
24 for emergency services.

25 I would like to know, if I can pose a question,

1       why the Federal regulations do not allow us to speak to  
2       the safety --

3               MR. MCINNIS: I can't tell --

4               MS. ALMANZA: Health safety issues.

5               MR. MCINNIS: I can't tell you why. Through the  
6       Chair, I can't tell you why. I can only tell you that is  
7       what the law provides.

8               MS. ALMANZA: Is There a specific section of the  
9       law or something that can be read?

10              CHAIRMAN BONSENOR: She probably can answer that  
11       question later on, okay?

12              MS. ALMANZA: Okay, okay. My last question --  
13       I'm sorry to take so much time.

14              CHAIRMAN BONSENOR: I'm going to charge you for  
15       the next one.

16              MS. ALMANZA: Then this is absolutely my last.  
17       If this is allowed, is this space leased? Will they own  
18       this property? If it's leased, for how long?

19              CHAIRMAN BONSENOR: It's usually leased.

20              MS. ALMANZA: It's usually leased?

21              CHAIRMAN BONSENOR: Yes.

22              MS. ALMANZA: And what are the terms of the  
23       lease typically, the leases?

24              CHAIRMAN BONSENOR: No idea. That's between the  
25       landlord and them.

1 MS. ALMANZA: Okay, all right, I have no more  
2 questions.

3 CHAIRMAN BONSENOR: Anymore objectors?

4 MR. LEON: Can I ask another question?

5 CHAIRMAN BONSENOR: To who?

6 MR. LEON: To either to you folks -- oh, never  
7 mind, she's coming.

8 MS. PETTIS: Jo Pettis, 18900 West Lake Drive,  
9 Country Club. Again, like Barbara said with the cell  
10 tower -- with the 911 tower being so close, we were at a  
11 meeting last night where a young lady living south of us  
12 here said that she had tried to get through to the police  
13 because she had a burglary in her home and somehow or  
14 other she was directed to Miami Lakes and they sent Miami  
15 Lakes out rather than Miami-Dade. Was this an  
16 interference caused by perhaps not a clear signal to 911?

17 CHAIRMAN BONSENOR: Miami Lakes and this station  
18 for our area is in the same building.

19 MS. PETTIS: No, no, no, Miami Lakes Police went  
20 to her home and told her, "We can't do anything here.  
21 You're in the county."

22 CHAIRMAN BONSENOR: Okay.

23 MS. PETTIS: So did somehow -- did the wires or  
24 the call get crossed somehow that it went to Miami Lakes  
25 Police for dispatch rather than Miami-Dade for dispatch?

1           CHAIRMAN BONSENOR: Okay, that's a question  
2 there they should answer later on.

3           MS. PETTIS: That's my question. Was there some  
4 kind of interference?

5           CHAIRMAN BONSENOR: I understand.

6           MS. PETTIS: And if so, would this cell tower  
7 have interference with our 911 services?

8           CHAIRMAN BONSENOR: Okay, what you want to know,  
9 what type of impact that tower will have in our community  
10 when it comes to emergency calling.

11          MS. PETTIS: That's right, because that's our  
12 emergency tower right there. And I don't know how many  
13 of you all remember, when they did bring this tower in,  
14 we had a much smaller tower and they raised it and made  
15 it so big and so high and we had objection, but it never  
16 changed because they said it was needed at the time. Now  
17 are we going to put a block in front of it? I think we  
18 should think about it. Thank you.

19          CHAIRMAN BONSENOR: Thank you. Anymore  
20 objectors? You were having a question for us, go ahead.  
21 Knock yourself out.

22          MR. LEON: I think I just read what I needed to  
23 know.

24          CHAIRMAN BONSENOR: Okay. Board recognizes  
25 there is no more objectors. Now rebuttal.

1 MS. MARTOHUE: Deborah Martohue, for the record.

2 I think I'll start with the hot issue, which is  
3 the E-911 issue and the Miami-Dade County tower. The  
4 county facilities and E-911 operate on an 800 megahertz  
5 system. We are all digital technology. We operate on a  
6 1900 megahertz system, which is an entirely different  
7 band. We do not interfere with each other. There's a  
8 couple of other providers that operate on 850, but  
9 there's strict rules, FCC rules about that type of  
10 interference. In fact, we tie in with E-911 service and  
11 provide that service.

12 What I can only surmise what might have happened  
13 to that phone call, because it is a common occurrence,  
14 what happens is 911 calls are prioritized in the system.  
15 If someone dials 911, that takes precedence over any  
16 other call in the area. And if there is no coverage or  
17 signal in the area or available capacity, what happens to  
18 that call, it gets transferred to another switch. I  
19 don't want to get too technical, but that very much could  
20 have happened. It happened to me once in Pinellas  
21 County, 'cause they do prioritize that call and they're  
22 trying to locate you. So they will get it through any  
23 signal they possibly can, even if it's out of the area.  
24 It has nothing to do with if there's interference. It  
25 has to do with prioritizing that call and getting it

1 through any possible antenna that has capacity at that  
2 moment. That's what we're required to do as part of our  
3 license, is prioritize those calls.

4 We're a part of and we participate in, T-Mobile,  
5 in the Phase 1 and Phase 2 deployment of E-911, which is  
6 enhanced 911. We're required by law. We have certain  
7 time frames and benchmarks, a certain number of sites we  
8 have to deploy in a certain time frame or we could lose  
9 our license, so we take that very seriously. We're not  
10 only a private business commercial entity, we also  
11 provide this public service, which we prioritize and we  
12 take very seriously. So I hope I would alleviate any  
13 concerns that this Board or anybody in the community has  
14 about that issue.

15 With respect to the six foot high fence, I  
16 apologize, our plans do say seven feet. Those are the  
17 plans we originally submitted, but if you look to your  
18 staff recommendation on Page 11, Section 8, staff has  
19 requested and it will be a condition for building permit  
20 that we put in a six foot high fence. At the last minute  
21 there was discussion between the zoning department and  
22 the Public Works Department that we had to work through  
23 for about three days, because they had the very concerns  
24 this gentleman illustrated regarding the possible sight  
25 views and obstruction to sight in the parking lot. As a

1 result of that conversation, we did lower the height of  
2 the fence to six feet and we had to go out and change our  
3 lease and lease more area. And it is shown right here,  
4 this hatched area right here, those were parking spaces.  
5 This was the original lease area. We had to come to an  
6 agreement with the landlord that these would not be used  
7 as parking spaces per the requirement of the Public Works  
8 Department. They looked at that very issue and we have  
9 to put like bumpers here, so that nobody could park there  
10 and we have to hatch it. And that resolves that very  
11 issue that the gentleman raised. So that was looked at  
12 and the department removed its objections once we  
13 resolved that issue and changed our leasing requirement  
14 and our site plan.

15 Let's see, we dealt with the fence, the system.  
16 I want to talk about -- one lady raised the  
17 issue about the prior church approval. As I recall, that  
18 was approved by this Board a few years back. It was an  
19 application for Crown Castle and perhaps some other  
20 providers. For whatever reason, they didn't build it,  
21 but, nevertheless, it wasn't a site we could have  
22 utilized or try to go and ask them to build it, you know,  
23 because it was out on Northwest 186 and near Northwest  
24 67. And as we showed you on that street map at tab, was  
25 it five, the pull-out, well, 67, 68, regardless, it's

1 well, well outside of the parameters of our search ring.  
2 It's even past that rooftop on the building that we  
3 looked at. So it wasn't anything that was going to solve  
4 the problem that we went through and showed you through  
5 our drive test data. So it just simply wasn't an option  
6 for us, plus it's not built.

7 Oh, the question -- I want to go back to the  
8 parking. The gentleman -- well, then we're not -- I  
9 think somebody raised the issue we wouldn't have enough  
10 parking. Well, the site plan shows that 222 parking  
11 spaces are required for this facility, 313 spaces are  
12 provided, so it's nearly 100 spaces more than what's  
13 required under the code. And certainly by eliminating  
14 four spaces, we're not coming close to, you know, meeting  
15 even minimum requirements. We're not seeking any  
16 variances, once again, for any, you know, setbacks,  
17 parking, landscaping. We're going to do everything by  
18 the code.

19 I also wanted -- one lady raised the issue why  
20 couldn't we move our site maybe to address the issues in  
21 the south, so if I could ask Mike to see the propagation  
22 map. As we, you know, tried to explain in the beginning,  
23 the red hatched areas and the green hatched areas are  
24 theoretical. That's what our propagation tools show you  
25 we should have in-building and in-car coverage. Then we

1 go out there and drive it, 'cause we have complaints. We  
2 have issues. As you can see, there's a lot of black up  
3 in this area. And even the adequate in-car is not  
4 adequate in-building and that's residential, so we drive  
5 the streets. We can't get in people's homes and do that  
6 type of testing, but it shows you we have a lot of green  
7 and black up in this area and that's exactly right smack  
8 in the dab, in the middle. Why we're locating right  
9 there. Not here, we've got red dots. We've got  
10 in-building. We've got a lot of in-car. This is not a  
11 high demand area. Where we have drop calls, that's a  
12 demand area. So that's why we're not locating further to  
13 the south. And I hope that answers your questions  
14 regarding that.

15 To answer the lady's question about light poles,  
16 why are we not co-locating on lightpoles. Well, I'm  
17 going to assume the light pole she refers to is standard  
18 light poles, are anywhere from 30 feet in height to 60  
19 feet, tops. Well, again, that's not going to meet our  
20 height requirements. And these lightpoles are not  
21 structurally designed to hold our equipment and withstand  
22 146 mile per hour winds at three second gusts under the  
23 Florida Building Code. So we take our structural  
24 requirements very seriously as well and we will not  
25 co-locate and we cannot co-locate on anything that will

1 not hold our equipment and meet every local code and  
2 state building code. So I hope that answers all of your  
3 questions.

4 The last thing that I just would like to read  
5 into the record and remind this Board that the whole  
6 entire purpose of this section, and I'll read it, the  
7 purpose of this subsection, which is the standard that  
8 we're under, (A)(18), is to regulate Wireless Supported  
9 Service Facilities, including Antenna Support Structures  
10 upon demonstration at public hearing that a zoning  
11 application for Wireless Supported Service Facility,  
12 including an Antenna Support Structure, is in compliance  
13 with the standards herein and the underlying district  
14 regulations in Section 33-36.2, which in this case would  
15 be BU-1A, and does not contravene the enumerated public  
16 interest standards established herein. The wireless  
17 service -- supported service facility, including any  
18 Antenna Support Structure, shall be approved.

19 And I respectfully submit to you tonight that  
20 you did not hear any substantial competent evidence that  
21 contravened any of the enumerated standards. Any health  
22 issues are precluded under Federal law and that's the  
23 Federal Telecommunications Act Section 704 of the United  
24 States annotated code and it's just simply not something  
25 that's in our code or allowed by Federal law to be

1 considered.

2 For the record, as a courtesy, antennas do not  
3 emit anything more than -- I mean, baby monitors have  
4 greater emissions than our antennas and I offer that as a  
5 courtesy. So it is not allowed under Federal law. And  
6 speculation as to where else we could have co-located  
7 would not constitute substantial competent evidence. We  
8 ask for favorable evidence. We have worked very hard to  
9 find a site that would minimize and be the least  
10 obtrusive and providing coverage, including E-911 for  
11 this area and we'd ask for your approval. Thank you.

12 CHAIRMAN BONSENOR: Are you finished completely?

13 MS. MARTOHUE: Yes.

14 CHAIRMAN BONSENOR: Okay. At this time, the  
15 hearing is closed.

16 Question.

17 COUNCILMAN GARCIA: Oh, yeah.

18 COUNCILMAN McKAY: Yeah.

19 CHAIRMAN BONSENOR: Go ahead.

20 COUNCILMAN GARCIA: I'll go first?

21 CHAIRMAN BONSENOR: Go ahead.

22 COUNCILMAN GARCIA: You took care of one  
23 question. I have a few questions. While they seem a  
24 little trivial, I'm going to ask them anyway. On the  
25 design, it states that you would put a flag, if so

1 required by the Board, or is it as part of the  
2 conditions?

3 MS. MARTOHUE: Our design includes a flag and  
4 it's a flagpole, but when you put a flag on -- and I just  
5 offer this as an option to this Board. It's not a  
6 requirement. This would be totally in your discretion.  
7 We've been in other communities in front of other boards.  
8 We can put a flag on. Under Federal law, we have to  
9 upright it. If that is an issue for this Board and you'd  
10 rather not upright this facility, then we won't put a  
11 flag on it. Some communities think that it blends more  
12 into the landscaping by just having a pole without  
13 drawing attention to the flag. We're amenable that the  
14 Board can opt for either option.

15 COUNCILMAN GARCIA: Okay, with that in mind, for  
16 argument sake, say it is approved and there's a flag on,  
17 what happens to that flag when it gets all messed up and  
18 all torn up and it looks really nasty, who replaces it?

19 MS. MARTOHUE: We do. We own the facility. We  
20 lease the parcel, but we own the facility and we're  
21 responsible to maintain the flag within the compliance of  
22 Federal law.

23 COUNCILMAN GARCIA: Okay, next question. You  
24 said there was going to be -- there would be other  
25 carriers within that cell flagpole.

1 MS. MARTOHUE: Uh-huh.

2 COUNCILMAN GARCIA: So they have to -- those  
3 carriers, whomever they may be, they have to keep the  
4 same aesthetics as that flagpole is right there like in  
5 your picture, the rendering. They can't put anything  
6 visual or anything visible outside that particular  
7 flagpole, it has to be within the flagpole?

8 MS. MARTOHUE: Correct, we design this flagpole.  
9 And we'll show you on the elevation, there are like what  
10 I'll call ports. And when -- we're going to be here,  
11 because that's what we need. Then we have three other  
12 ports and another carrier could come in and locate their  
13 antenna transmission, their transmitters and receivers  
14 inside. Everything is inside that pole. Their equipment  
15 would have to be located within the compound that we're  
16 fencing and landscaping as well and they would need to  
17 work that arrangement with the landlord, but we are  
18 providing the space and opportunity for that to happen.  
19 We sent out letters of interest letting people know we  
20 were coming to the zoning hearing. Carriers are in touch  
21 with each other all the time and we've let them know, and  
22 if it's approved, I'm sure they'll be in touch with us,  
23 if they need this location.

24 COUNCILMAN GARCIA: You mentioned that there  
25 would be a wooden fence around that location six feet

1 tall and landscaping.

2 MS. MARTOHUE: Yes.

3 COUNCILMAN GARCIA: The landscape -- the wooden  
4 fence, who maintains it, you?

5 MS. MARTOHUE: Yes, we need to maintain it. We  
6 would prefer more durable material, however, in the  
7 county drafted their new ordinance, they've required wood  
8 fences in areas like this, which are more of a  
9 maintenance issue and we pointed that out to them, but it  
10 would be our responsibility to maintain that fence in  
11 good repair.

12 COUNCILMAN GARCIA: Hopefully, my last question.  
13 The landscaping, is that also your responsibility?

14 MS. MARTOHUE: Yes, sir.

15 COUNCILMAN GARCIA: Okay, what's to assure our  
16 community, not only the Board, but our community that's  
17 going to be maintained at an acceptable level? Because  
18 when we're talking about, okay, what it's acceptable to  
19 you may not be acceptable to me, then vice versa. In  
20 other words, what's to say, okay, well, you know what, it  
21 looks good to me, but to someone else and everyone else  
22 in the community says this thing looks really bad, the  
23 fence is like deteriorating. It hasn't been finished.  
24 It's just regular wood and it's looking really bad. I  
25 understand, yeah, we'll keep it, you'll maintain it, but

1       what are the maintenance standards?

2               MS. MARTOHUE: Well, I'm sure there's code  
3       compliance issues as well and if, you know, we were  
4       really to fall that much in disrepair, we'd be cited for  
5       that, but, nevertheless, we don't -- we don't have an  
6       interest, particularly with a wood fence in anything  
7       rotting around. We have very expensive equipment. We  
8       have maintenance crews out there every two weeks to  
9       ensure our facility is running properly. There is no  
10      benefit to us to have something -- if the wood fence is  
11      deteriorating where someone could break through it or  
12      tear it down or something, that becomes a security issue  
13      for us. So it's in our best interest from a security  
14      point of view that we maintain a landscape hedge around  
15      that fence, that we maintain the fence in good repair.  
16      So, I mean, that's just standard operating procedure for  
17      us. We're not looking -- these are our customers. This  
18      is our community. We're not looking to ding our  
19      reputation with this community. We've always maintained  
20      our facilities in good repair and we intend to do so.

21              COUNCILMAN GARCIA: Thank you. That's it for my  
22      questions. Thank you.

23              COUNCILWOMAN FRANKLIN: I just have --

24              CHAIRMAN BONSENOR: Go ahead.

25              COUNCILWOMAN FRANKLIN: I just have one

1 question. As far as the parking spots that you'll be  
2 removing from the -- how many total parking spots are  
3 they losing?

4 MS. MARTOHUE: With our facility, they're losing  
5 a total of eight, 'cause we had to compromise with four  
6 additional, correct? There were four here, two on each  
7 side and then Public Works requested that we also put  
8 bumpers and preclude parking in this area, so it's a  
9 total of eight, but, again, this site had almost 100  
10 extra parking spaces required by code.

11 COUNCILMAN MCKAY: My question, what's the  
12 circumference of this?

13 MS. MARTOHUE: At the base it's approximately,  
14 correct me if I'm wrong, Mandy, about five-and-a-half  
15 feet in diameter, and then it tapers up to about maybe 18  
16 inches at the base? Correct. That's roughly -- that's  
17 diameter. That's not radius. You know, that's roughly  
18 two and three quarters inch radius. That, again, is to  
19 make sure that it's wide enough at the top to hold the  
20 antennas inside. It's also a structural thing.

21 Typically, a pole of this size will have about  
22 a 20-foot casing footer that goes into the ground. And,  
23 you know, we have to meet all the Florida Building Code  
24 requirements that, you know, apply to any structure. So  
25 there's a certain amount of, I guess, any size, breadth

1 of width of the pole that is just required from a  
2 structural standpoint to maintain a facility of this  
3 height.

4 COUNCILMAN MCKAY: Will this be just like a  
5 metal color or it's going to be painted white, this  
6 flagpole, or it's just going to be an aluminum looking  
7 flagpole?

8 MS. MARTOHUE: Right now it's proposed as  
9 galvanized aluminum. We find historically that actually  
10 blends more into the background, but if the Board wants  
11 it a different color, we'll paint it a different color.  
12 But, as I said, historically, the galvanized just seems  
13 to go away. When you paint it, it can become --

14 COUNCILMAN MCKAY: I know you said at the top of  
15 the tower you have your camouflaged antennas.

16 MS. MARTOHUE: It's white? Oh, in this case  
17 we're doing it white. If you want it galvanized -- sorry  
18 about that. If you want it, we can do galvanized.

19 COUNCILMAN MCKAY: The pole will be white?

20 MR. MARTOHUE: Pick a color. We're good. Trust  
21 me, that's not one of our huge worries. You want it  
22 galvanized. You want it white. You tell us.

23 CHAIRMAN BONSENOR: Well, we'll discuss that  
24 later.

25 MS. MARTOHUE: Just consider it. We're easy.

1 COUNCILMAN McKAY: And I heard you mention, and  
2 I don't know if I need to direct -- through the Chair,  
3 direct this to staff, that the fence surrounding the area  
4 has to be wood. It cannot -- you know, it cannot -- you  
5 know, 'cause the picture, the eyesight, you know --

6 MS. MARTOHUE: The code requires that we come to  
7 you without seeking a variance -- and the county attorney  
8 can jump in on this, but I was told by staff we have to  
9 come to you to meet the code. We didn't want to come and  
10 ask for a variance and say we want to put up a chain link  
11 or some other kind of other fence material. We want to  
12 come and meet the code. The code requires wood.  
13 However, this Board has the discretion to change that  
14 condition. If you'd prefer a different material that you  
15 think would be more durable and be more aesthetically  
16 pleasing or something, you can change it, we can't, and  
17 then we would comply with that condition going into  
18 building permit.

19 COUNCILMAN McKAY: Okay, that's it.

20 CHAIRMAN BONSENOR: Thank you.

21 COUNCILMAN O'DELL: I've got a question and I  
22 don't know that she can answer it. Previously, when this  
23 property was zoned and she made a statement that by code  
24 it's required to have 313 parking spots.

25 MS. MARTOHUE: Uh-huh.

1 COUNCILMAN O'DELL: In so many cases of things  
2 that we hear, there's variances asked for this code,  
3 which reduces parking and I'm wondering whether that  
4 original developer met the 313 or not and I won't know  
5 until I see actual zoning papers of what was done.

6 CHAIRMAN BONSENOR: Staff, staff. They can  
7 answer that.

8 MR. DAVILA: Mr. O'Dell, just for clarification,  
9 actually, according to our guidelines, the requirements  
10 it's 222, not 313.

11 MS. MARTOHUE: That's what's provided.

12 COUNCILMAN O'DELL: I understand the guidelines,  
13 but I know variances. And in numerous we have heard  
14 variances to reduce parking requirements.

15 MR. DAVILA: If you bear with me one quick  
16 second, what I'm doing here is reviewing the old history  
17 from this parcel and I'll let you know if there's a  
18 variance requested.

19 COUNCILMAN O'DELL: And then the other question  
20 I have that goes along with that is, in reading through  
21 the packet, there's a car wash there, it takes parking  
22 spaces. There's a nursery plant there that it takes  
23 parking spaces. There's also a little building there  
24 that takes parking spaces.

25 So my concern is, you know, really, what are we

1 talking about here? So we'll wait on staff.

2 MR. DAVILA: If I may, through the Chair,  
3 Mr. O'Dell, I'm reviewing here the previous history on  
4 the property, according to our guidelines here, and there  
5 has been no variance requested.

6 COUNCILMAN O'DELL: Are you looking at the same  
7 packet I'm looking at?

8 MR. DAVILA: Yes, sir.

9 COUNCILMAN O'DELL: Well, that really doesn't  
10 give you a history. It doesn't look at variances. It  
11 tells you what the zonings were, but it doesn't give  
12 really me any variances that were affected as far as  
13 parking, as far as landscaping, things like that.

14 MR. McINNIS: Yes, if variances existed, they  
15 would be shown here.

16 COUNCILMAN O'DELL: It would be shown there?

17 MR. McINNIS: They would be.

18 COUNCILMAN O'DELL: So what you're telling me,  
19 that there is 313 parking spots there. They're not in  
20 essence --

21 COUNCILMAN McINNIS: There have been no parking  
22 variances requested.

23 COUNCILMAN O'DELL: There's been no parking  
24 variances. Was that the requirement back when this was  
25 originally built or is this a new requirement on parking

1       that was just done recently, you know, not too many years  
2       ago?

3               MR. DAVILA: To my understanding, and through  
4       the Chair, this requirement for parking has not changed.  
5       So this would be in stipulation, you know, before.

6               CHAIRMAN BONSENOR: Basically, they have --

7               COUNCILMAN O'DELL: This goes back to 1982.

8               CHAIRMAN BONSENOR: They have 100 parking spaces  
9       extra.

10              COUNCILMAN O'DELL: If, in fact --

11              MS. MARTOHUE: Yes. If I could add, every time  
12       you come before on any type of modification to a site  
13       plan, special exception, any type of zoning application,  
14       staff will evaluate parking. They will evaluate  
15       setbacks. They will evaluate landscaping. Many times  
16       we've had to go in and upgrade landscaping.

17              Again, this site has 313 existing parking  
18       spaces, so this isn't even a close call in terms of the  
19       parking that's required.

20              And just as a matter of information, it hasn't  
21       happened yet, but the landlord has told us the car wash  
22       is going away. It's not relevant to the criteria, but I  
23       just point that out since that seemed to be a concern of  
24       Mr. O'Dell.

25              COUNCILMAN O'DELL: In referencing, in looking

1 in your area, you know, when I think about it, did you  
2 people look at the FPL easement area?

3 MS. MARTOHUE: We always look at the FPL  
4 easement area and FPL has a statewide policy of not  
5 allowing any co-location on any of their facilities and  
6 if anybody could change that policy, we would love you.  
7 They are an excellent opportunity for co-location and  
8 they just simply will not work with any carrier in the  
9 State of Florida. And it's unfortunate, because other  
10 states have managed to work it out with their power  
11 companies.

12 COUNCILMAN O'DELL: Yeah, 'cause there's a  
13 telephone switching center there.

14 MS. MARTOHUE: Trust me.

15 COUNCILMAN O'DELL: You have MaBell there and I  
16 don't see any difference between you and MaBell. How can  
17 they exist and not let you allow to coexist, because  
18 that's a better site than going in the middle of a  
19 commercial piece.

20 MS. MARTOHUE: I understand, but, unfortunately,  
21 state law and Federal law does look at land line services  
22 differently than wireless services and I'm sure Bell  
23 South and MaBell is a very old installation that FPL may  
24 have had a different policy prior to wireless service  
25 providers coming on-line. I could just tell you what it

1 is today, although we try to fight to change it daily.

2 COUNCILMAN O'DELL: They got better lobbyists.

3 MS. MARTOHUE: Yes, they do. They're richer  
4 than we are.

5 COUNCILWOMAN FRANKLIN: They got more customers.

6 COUNCILMAN O'DELL: They've been around longer.  
7 They got better lobbyists.

8 MS. MARTOHUE: That's absolutely correct.

9 CHAIRMAN BONSENOR: Okay, anymore questions?

10 COUNCILMAN PEREZ: I have a question.

11 CHAIRMAN BONSENOR: Go ahead, Mr. Perez.

12 COUNCILMAN PEREZ: As far as saying the car wash  
13 is going away, that's hearsay. I don't got no proof of  
14 that, but it's there.

15 MS. MARTOHUE: It's there.

16 COUNCILMAN PEREZ: As you know, Metro --  
17 Team Metro moved into that -- into that shopping center.  
18 Unofficially, I spoke to the people, and I say  
19 unofficially, they got traffic coming in and out of that  
20 office of 80 and plus cars a day. Now, this is going to  
21 take eight parking spaces. Eight parking spaces might  
22 not sound like much, but on a Saturday, when you have the  
23 car wash -- and I've been to the car wash and there's at  
24 least 20 employees, so you can imagine the traffic in and  
25 out of there every day, plus Team Metro. I mean, that's

1     reducing the parking of that shopping center, which now  
2     is coming on line, 'cause that shopping center was dead  
3     for quite a lot of years. Now that shopping center, if  
4     I'm not mistaken, there's maybe one or two stores empty.  
5     The rest of the stores are packed. So anything that  
6     reduces the parking space, be it that you say, it has  
7     313, still, the car wash alone takes more than one lot at  
8     a time.

9                 So I think, this is my opinion, putting that  
10    there is going to reduce the parking space and making  
11    another Sedano's shopping center, which on 67th which  
12    there's another car wash there, which you can't drive  
13    there on a Saturday, you can't get through the shopping  
14    center on a Saturday, and that's what I'm trying to  
15    prevent this community going through.

16                MS. MARTOHUE: Mr. Perez, with all due respect,  
17    I mean, there just simply -- we can only go by code  
18    requirements and that's what the county has set by law.  
19    I mean, this isn't even close. I mean, we're not even  
20    talking 10 spaces. We're talking almost an additional 90  
21    spaces. And, I mean, there's just simply -- it's not  
22    relevant to any criteria. I mean, we are providing all  
23    of the requirements under the code in excess of that and  
24    we'd just appreciate your favorable consideration in  
25    light of that and the staff's finding that public works

1 has found that we're simply not going to have any impact  
2 on these services.

3 COUNCILMAN PEREZ: Well, me, being a community  
4 member of this area, driving to the shopping centers,  
5 trust me, I know, because I'm in the towing business and  
6 I drive a truck. And when I got to go through a shopping  
7 center, and I see parking lots full to capacity, I mean,  
8 it's ridiculous. And I'm just scared that's going to  
9 happen to this shopping center, too, and that's my  
10 concern.

11 CHAIRMAN BONSENOR: Okay. Mr. Serrano.

12 COUNCILMAN SERRANO: No, all my questions have  
13 been answered.

14 CHAIRMAN BONSENOR: You're not finished yet.

15 MS. MARTOHUE: Okay.

16 CHAIRMAN BONSENOR: I have some concerns. This  
17 area is going to be fenced in, you said?

18 MS. MARTOHUE: Yes.

19 CHAIRMAN BONSENOR: And it's going to be wood?

20 MS. MARTOHUE: Required.

21 CHAIRMAN BONSENOR: Okay. Six feet high?

22 MS. MARTOHUE: Correct.

23 CHAIRMAN BONSENOR: You're not going to have any  
24 lighting in there at night?

25 MS. MARTOHUE: Inside the facility?

1                   CHAIRMAN BONSENOR: Inside the wooden area,  
2                   inside the enclosure?

3                   MS. MARTOHUE: If we were to uplight the pole,  
4                   the pole -- the light fixture is attached to the pole  
5                   about 30 feet up to shine on the flag, so you're correct,  
6                   but there is no one who should be inside. That's a  
7                   secure facility. That's very expensive equipment.

8                   CHAIRMAN BONSENOR: Well, that's why they break  
9                   in, because it's secure.

10                  MS. MARTOHUE: Well, I mean, let me say, each  
11                  cabinet, it's not like somebody can pick it up and throw  
12                  it in the back of the truck. It's about 1200 pounds and  
13                  they're locked. We certainly don't want anybody in that  
14                  facility.

15                  CHAIRMAN BONSENOR: Let me tell you --

16                  MS. MARTOHUE: Oh, let me show -- if I can  
17                  answer. Let me show you the photo sim. Mike. You'll  
18                  see we've actually located in an area which is right next  
19                  to an existing light standard that will provide light in  
20                  this area anyway.

21                  CHAIRMAN BONSENOR: Let me tell you what I'm  
22                  getting at. Basically, if I'm 12, 13 years old, it's  
23                  enticing to jump in there just for the heck of it. In  
24                  addition to that, I'll pass by, I'm drinking a soda, I  
25                  don't know where to put my bottle, that's a dumping area.

1 Eventually it's going to be full of garbage. If you  
2 don't maintain it at least once a week or twice every  
3 month, it's going to be a dumpster.

4 MS. MARTOHUE: Trust me, we'll be maintaining  
5 it. Again, this equipment is very expensive. We're not  
6 interested in having somebody vandalize or turn it into a  
7 dumpster. If this Board wants a seven foot fence, you  
8 have that choice. We have to come to you and abide by  
9 the code, but if this Board wants us to have a seven foot  
10 high fence and you want it to be a different material,  
11 you can do that.

12 CHAIRMAN BONSENOR: Six feet, seven feet doesn't  
13 make any difference.

14 MS. MARTOHUE: Okay.

15 CHAIRMAN BONSENOR: Standard, they come six  
16 feet.

17 MS. MARTOHUE: Right.

18 CHAIRMAN BONSENOR: I mean, four, six, eight,  
19 you know the drill. Now, my main concern is safety and  
20 the other concern is garbage.

21 My last concern is the height of this structure  
22 is 100 feet high.

23 MS. MARTOHUE: Yes.

24 CHAIRMAN BONSENOR: It's double the height of  
25 the lighting pole or close to double. It's extremely

1 high. That flag is going to be extremely high.

2 MS. MARTOHUE: And it's about half the height of  
3 the Miami-Dade tower across the street. And if we could  
4 have located on that, we would have.

5 CHAIRMAN BONSENOR: Yes, I understand that, but  
6 that's not a shopping center, this is. That's the only  
7 difference. And unless Team Metro is on top of you guys  
8 all the time, you know, giving you tickets, summonses. I  
9 mean, it's going to be hard for you to maintain it.

10 MS. MARTOHUE: There is no need for them to come  
11 out and ticket. We have a maintenance contract. We are  
12 out there, we maintain our site. It's just something, I  
13 guess, the Board is going to have to accept on faith. I  
14 mean, we maintain our equipment. We have an interest in  
15 the investment of our equipment. It's just that simple.

16 And with respect to the height, this is the  
17 minimum height necessary. We've put on expert testimony  
18 regarding that. We had a range of height. We went with  
19 the minimum that covers this problem. And there just  
20 simply is no other structure and that's the problem.  
21 There is no other structure in the area that's existing  
22 that we can co-locate on and we've done everything that  
23 we could to minimize the height to meet our needs.

24 CHAIRMAN BONSENOR: When it comes to the color,  
25 I'm back to Mr. McKay, I don't know if white is the right

1 color for that, if it is approved. It should blend in  
2 with the rest of the adjacent structure.

3 MS. MARTOHUE: If I could speak --

4 CHAIRMAN BONSENOR: That's my opinion.

5 MS. MARTOHUE: If I speak to that, I'll tell  
6 you, honestly, historically, I think galvanized seems to  
7 work for everybody best. White can be a maintenance --  
8 we'll do whatever you want, but when you start -- when  
9 I've seen structures where initially, when these first  
10 starting coming out, people thought, well, you should  
11 paint the first 20 or 30 feet the same colors as the  
12 buildings around it and the next, you know, maybe a  
13 little green, then above that blue. And they're hideous,  
14 they stick out, so I don't recommend it. We'll do it,  
15 but I don't recommend it. The only time we have to go in  
16 and use color occasionally on some of these towers is  
17 when they reach, what is it, over 180 or 200 feet for FAA  
18 requirements. We're not even close there. So there is  
19 no color that's necessary and I don't recommend it, but  
20 it's this Board's choice.

21 CHAIRMAN BONSENOR: Okay, I don't have anymore  
22 questions. Do I hear a motion?

23 MR. LEON: I --

24 CHAIRMAN BONSENOR: No, you cannot. It's  
25 closed. The hearing is closed.

1                   Okay, at this point we're ready to vote. Do I  
2                   have a motion?

3                   COUNCILMAN SERRANO: I like to make the motion  
4                   to deny the application.

5                   COUNCILMAN PEREZ: I'll second.

6                   CHAIRMAN BONSENOR: Staff, roll call, please.

7                   MR. JONES: Is that with or without prejudice?

8                   CHAIRMAN BONSENOR: Without. It should be  
9                   without.

10                  MR. JONES: Motion for denial of application  
11                  without prejudice.

12                  Ms. Franklin?

13                  COUNCILWOMAN FRANKLIN: Against.

14                  MR. JONES: Mr. Garcia?

15                  COUNCILMAN GARCIA: For.

16                  MR. JONES: Mr. McKay?

17                  COUNCILMAN MCKAY: Against.

18                  MR. JONES: Mr. O'Dell?

19                  COUNCILMAN O'DELL: For.

20                  MR. JONES: Mr. Perez?

21                  COUNCILMAN PEREZ: For.

22                  MR. JONES: Mr. Serrano?

23                  COUNCILMAN SERRANO: For the motion.

24                  MR. JONES: Mr. Bensenor?

25                  CHAIRMAN BONSENOR: Against the motion.

1 MR. JONES: Motion passed four to three.

2 CHAIRMAN BONSENOR: Motion to adjourn.

3 COUNCILMAN O'DELL: Motion to adjourn.

4 COUNCILMAN GARCIA: Second.

5 CHAIRMAN BONSENOR: Meeting adjourned.

6 (Thereupon, the hearing was concluded.)

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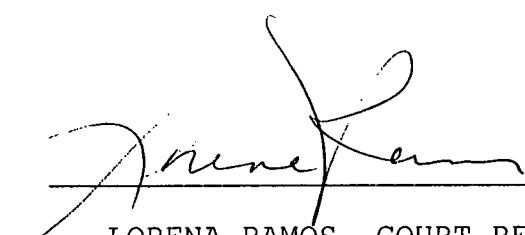
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## 1 CERTIFICATE OF REGISTERED PROFESSIONAL REPORTER

2  
3 STATE OF FLORIDA:  
4 SS:  
5 COUNTY OF DADE:

6 I, LORENA RAMOS, do hereby certify that Country  
7 Club/T-Mobile, Item Number , was heard by Community  
8 Zoning Appeals Board 5 on the 20th day of May 2004; and  
9 that the foregoing pages, numbered from 1 to 63,  
10 inclusive, constitute a true and correct transcription of  
11 my shorthand report of the proceedings.

12 WITNESS my hand and official seal in the City of  
13 Miami, County of Dade, State of Florida, this 27th day of  
14 May 2004.

15  
16  
17   
18 LORENA RAMOS, COURT REPORTER

